

LIBRARY  
SUPR. C. RT. U. S.

APPENDIX

LIBRARY  
SUPREME COURT, U.

**SUPREME COURT OF THE UNITED STATES**

October Term, 1971

No. 70-99

Supreme Court, U.S.

FILED

NOV 24 1971

E. ROBERT SEAVER, CLERK

EVANSVILLE-VANDERBURGH AIRPORT  
AUTHORITY DISTRICT, ET AL,

*Petitioners,*

—vs.—

DELTA AIRLINES, INC., ET AL,

*Respondents*

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF INDIANA

Petition for Certiorari Filed March 19, 1971

Certiorari Granted October 12, 1971

## INDEX

	PAGE
Relevant Docket Entries .....	2
Plaintiffs' Complaint .....	5
Parties' Stipulation of Facts Submitted to Vanderburgh Superior Court .....	42
Exhibit 4 to Parties' Stipulation of Facts Submitted to Vanderburgh Superior Court ...	65
Exhibit A to Parties' Stipulation of Facts Submitted to Vanderburgh Superior Court ...	71
Summary of Exhibit B to Parties' Stipulation of Facts Submitted to Vanderburgh Superior Court .....	74
Exhibit C to Parties' Stipulation of Facts Submitted to Vanderburgh Superior Court ...	83
Exhibit D to Parties' Stipulation of Facts Submitted to Vanderburgh Superior Court ...	94
Order of the Vanderburgh Superior Court Granting Petition of William F. Wood to Intervene .....	98
Order of the Vanderburgh Superior Court Granting Petition of Paul E. Hatfield to Intervene .....	101
Intervening Complaint of William F. Wood ...	104
Findings of Fact and Conclusions of Law of The Vanderburgh Superior Court .....	134

Defendants' Answer to Plaintiffs' Complaint for Injunction in the Vanderburgh Superior Court .....	158
Defendants' Answer to Intervenor Wood's Complaint for Injunction in the Vanderburgh Superior Court .....	169
Defendants' Counterclaim Against Plaintiffs in the Vanderburgh Superior Court .....	180
Plaintiffs' Motion for Summary Judgment in the Vanderburgh Superior Court .....	184
Defendants' Motion for Summary Judgment in the Vanderburgh Superior Court .....	187
Judgment of the Vanderburgh Superior Court Granting Plaintiffs a Permanent Injunction Against Defendants .....	189
Opinion of the Supreme Court of Indiana on Appeal from the Superior Court of Vanderburgh County .....	198

## APPENDIX

---

# SUPREME COURT OF THE UNITED STATES

October Term, 1971

---

No. 70-99

---

EVANSVILLE-VANDERBURGH AIRPORT  
AUTHORITY DISTRICT, KENNETH C. KENT,  
ELMO HOLDER, ROBERT M. LEICH, IAN F.  
LOCKHART, CLIFFORD K. ARDEN, JAMES A.  
GEYER and PAUL E. HATFIELD, on behalf of  
himself and all other persons similarly situated,

*Petitioners,*

—v8.—

DELTA AIRLINES, INC., EASTERN AIRLINES,  
ALLEGHENY AIRLINES, INC., and WILLIAM  
F. WOOD, on behalf of himself and all other  
persons similarly situated,

*Respondents*

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF INDIANA

---

Petition for Certiorari Filed March 19, 1971  
Certiorari Granted October 12, 1971

**RELEVANT DOCKET ENTRIES**  
In the Vanderburgh Superior Court

6-28-68 Plaintiffs file verified complaint for restraining order and temporary injunction and permanent injunction. Plaintiffs file bond of \$7,500.00 and temporary restraining order issued.

1-16-69 Plaintiffs file request for special findings of fact and conclusions of law.

1-16-69 William F. Wood files verified petition to intervene.

1-17-69 Hearing on petition for temporary restraining order and injunction.

1-17-69 Court grants petition of William F. Wood to intervene. Court grants defendants right to file petition to intervene on behalf of other parties. Parties file stipulations of fact. On motion, Allegheny Airlines is substituted for plaintiff Lake Central.

1-22-69 Paul E. Hatfield files petition to intervene as party defendant which petition is granted.

1-30-69 Defendants present proposed findings of fact and conclusions of law.

1-31-69 William F. Wood, on behalf of himself and others similarly situated, files his intervening complaint.

1-31-69 Plaintiffs present proposed findings of fact and conclusions of law.

2-21-69 Court renders special findings of fact and conclusions of law for plaintiff. Judgment of temporary injunction on said special findings and conclusions of law.

3-24-69 Defendant Evansville-Vanderburgh Airport

Authority District files Counterclaim against plaintiffs.

3-24-69 Defendants file answers in four paragraphs to intervening complaint of William F. Wood. Defendants file answers in four paragraphs to plaintiffs' complaint.

4-16-69 Plaintiffs' demurrer to defendants' Counterclaim sustained.

4-17-69 Plaintiffs file motion for summary judgment.

5-1-69 Defendants file motion for summary judgment.

5-8-69 Motion of plaintiffs and intervening plaintiff for summary judgment is granted. Cross motion of defendants and intervening defendant for summary judgment is overruled. Final judgment for plaintiffs perpetually enjoining defendants.

5-14-69 Defendants file praecipe for transcript of entire record.

In the Supreme Court of Indiana

8-5-69 Transcript and assignment of errors submitted under rule 2-14.

12-2-69 Appellants file brief.

3-5-70 Appellees file brief.

5-4-70 Appellants file reply brief.

12-23-70 1970 Term. Judgment affirmed. De Bruler, J., Hunter, C. J., Arterburn, Given and Jackson, J. J., concur.

2-10-71 Appellants file request to Clerk to certify

4.

and transmit entire record. Notice of petition for certiorari to the Supreme Court of the United States. Appellants petition to transfer record to the Supreme Court granted. Arterburn, C. J.

In the Supreme Court of the United States

3-19-71 Petition for Writ of Certiorari to the Supreme Court of Indiana filed.

10-12-71 Certiorari granted.

**PLAINTIFFS' COMPLAINT**

**(R. 412)**

**Vanderburgh Superior Court  
Vanderburgh County, Indiana**

**Cause No. SC 68-328**

STATE OF INDIANA )  
 ) SS:  
 COUNTY OF VANDERBURGH )  
 IN THE SUPERIOR COURT OF VANDERBURGH  
 COUNTY

1968 TERM

DELTA AIR LINES, INC. )  
 EASTERN AIR LINES, INC. )  
 LAKE CENTRAL AIRLINES;  
 INC. )

*Plaintiffs* )

vs.

NO. SC-68-328 )

EVANSVILLE-VANDERBURGH )  
 AIRPORT AUTHORITY DIS- )  
 TRICT, KENNETH C. KENT, )  
 ELMO HOLDER, ROBERT M. )  
 LEICH, IAN F. LOCKHART, )  
 CLIFFORD K. ARDEN, and )  
 JAMES A. GEYER, )

*Defendants* )

COMPLAINT FOR RESTRAINING ORDER,  
 TEMPORARY INJUNCTION, AND  
 PERMANENT INJUNCTION

PARAGRAPH I

Plaintiffs DELTA AIR LINES, INC., EASTERN AIRLINES, and LAKE CENTRAL AIRLINES, INC., hereinafter sometimes referred to as "plaintiff Airlines," for their first cause of action allege and say:

1. Plaintiff DELTA AIR LINES, INC. is a corporation organized under the laws of the State of Louisiana.

ana and is a foreign corporation duly authorized to transact business in the State of Indiana.

2. Plaintiff EASTERN AIRLINES is a corporation organized under the laws of the State of Delaware and is a foreign corporation duly authorized to transact business in the State of Indiana.

3. Plaintiff LAKE CENTRAL AIRLINES, INC., a corporation organized under the laws of the State of Delaware having its principal place of business in the State of Indiana and is duly authorized to transact business in the State of Indiana.

4. The defendant EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT is the owner and operator of Dress Memorial Airport in Vanderburgh County, State of Indiana, deriving its authority and power solely by statute, said statute being Burns' Ind. Ann. Stats. (1964 Repl.), Sections 14-1201 through 14-1235, said defendant EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT being expressly empowered by statute to sue and be sued in its own name, said statute being Burns' Ind. Stats. (1964 Repl.), Section 14-1215(1).

5. The defendant KENNETH C. KENT is a member and President of the Board of Directors of the EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT.

6. The defendant ELMO HOLDER is a member and Vice-President of the Board of Directors of the EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT.

7. The defendant ROBERT M. LEICH is a member and Secretary of the Board of Directors of the EV-

## EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT.

8. The defendant IAN F. LOCKHART is a member of the Board of Directors of the EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT.

9. The defendant CLIFFORD K. ARDEN is a member of the Board of Directors of the EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT.

10. The defendant JAMES A. GEYER is the Airport Manager of Dress Memorial Airport and is the Treasurer of the EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT.

11. Each of the plaintiff Airlines is a commercial air carrier transporting passengers and commodities in interstate commerce by virtue of authority granted to them by the Civil Aeronautics Board pursuant to the provisions of 49 U.S.C. Section 1371; plaintiff Airlines are authorized to serve the public in interstate commerce between Dress Memorial Airport and various other locations within and without the State of Indiana.

12. Each of the plaintiff Airlines herein, pursuant to lease agreements with the EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT, operates facilities at Dress Memorial Airport for the purpose of providing commercial air service, said facilities including air passenger ticket counters, offices, storage space and other facilities.

13. DELTA AIR LINES, INC., operates nine (9) regularly scheduled flights daily from Dress Memorial Airport, of which three (3) flights are direct flights.

to locations beyond the State of Indiana. Five (5) flights terminate at locations beyond the State of Indiana. One (1) flight terminates solely within the State of Indiana.

14. EASTERN AIRLINES operates six (6) regularly scheduled flights daily from Dress Memorial Airport, all of which are direct flights to locations beyond the State of Indiana. During the twelve (12) months preceding June 30, 1967, EASTERN AIRLINES carried 46,029 passengers enplaning at Dress Memorial Airport, all of whom were carried to destinations beyond the State of Indiana.

15. LAKE CENTRAL AIRLINES, INC., operates two (2) regularly scheduled flights daily from Dress Memorial Airport, both of which are direct flights to locations beyond the State of Indiana. During the twelve (12) months preceding June 30, 1967, LAKE CENTRAL AIRLINES, INC., carried 13,578 passengers enplaning at Dress Memorial Airport all of whom were carried to destinations beyond the State of Indiana.

16. During the twelve (12) months preceding June 30, 1967, a total of 128,396 persons departed from Dress Memorial Airport upon scheduled and non-scheduled commercial air carriers.

17. Enplaning air passengers constitute a minority of the users of Dress Memorial Airport. In 1967 there were 146,955 enplaning passengers and 145,142 deplaning passengers on air carrier flights. In 1967, in addition to some 14,834 takeoffs and landings by commercial air carriers, there were 84,598 takeoffs and landings by other civil aircraft, both local and itinerant, each resulting in the use of the airport facilities by one

or more persons. There are also other users of the airport facilities, such as persons visiting the bar and restaurant, persons using the freight facilities, observers and others, all hereinafter more fully specified.

18. On February 28, 1968, the Board of Directors of the EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT enacted an ordinance known as Ordinance Number 33 which levies a charge of \$1.00 on every enplaning commercial air passenger at Dress Memorial Airport and directs the plaintiff Airlines, as vendors of air line tickets, to collect said charge for the EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT, a copy of said ordinance being attached hereto, made a part hereof, and marked "Exhibit A."

19. Said Ordinance Number 33 is to take effect on July 1, 1968.

20. Said Ordinance Number 33 will require all air line passengers departing Dress Memorial Airport to pay a charge of \$1.00 as a condition for the right to go aboard (enplane upon) plaintiff Airlines' aircraft, plaintiff Airlines being directed by the terms of said ordinance, to collect said charge of \$1.00 and impliedly being directed to refuse to permit any air line passenger to board their aircraft unless said charge has been paid, Section 1 of said ordinance imposing the charge of \$1.00 upon every enplaning air passenger and Section 2 imposing upon all air lines, their agents and employees, the responsibility of collecting said charge.

21. Said charge of \$1.00 is purportedly imposed as a fee for the use of airport facilities, but said charge is, in fact, not imposed upon a majority of the users of the airport facilities, to-wit

- a. persons using the airport facilities after arrival at said airport upon commercial aircraft;
- b. persons using the airport facilities upon arrival to or departure from Dress Memorial Airport by means of non-commercial aircraft;
- c. persons and corporations using the airport facilities to transport and receive air freight shipments;
- d. persons using the airport facilities when meeting or seeing-off air line passengers;
- e. persons using the airport facilities for entertainment purposes in observing the arrival and departure of aircraft;
- f. persons using the airport facilities incidental to the use of dining and bar facilities and other facilities located at said airport; and
- g. other persons making use of the airport facilities who are not departing from said airport.

22. The only method by which the plaintiff Airlines can be assured that every person boarding one of their aircraft at Dress Memorial Airport pays said charge is to publish said charge as part of their tariffs and rates for departure from Dress Memorial Airport, many air line tickets for departures from Dress Memorial Airport being written by out-of-state travel agencies, private persons and corporations authorized to write their own ticket, and by other commercial air lines who are authorized to write tickets upon plaintiff Airlines.

23. Said charge of \$1.00 imposed by Ordinance Number 33 will additionally be required to be collected from air passengers enplaning at Dress Memorial Airport upon non-scheduled or charter air lines, said non-scheduled or charter air lines not being parties hereto

but believed by plaintiff Airlines to be interested in the disposition of this lawsuit.

24. Plaintiff Airlines, as vendors of air line tickets in Vanderburgh County, Indiana, will be required to collect directly from all passengers departing or enplaning from Dress Memorial Airport said charge of \$1.00 irrespective of the fact that a vast majority of said passengers will be traveling in interstate commerce to destinations beyond the State of Indiana and without consideration of the actual facilities and services furnished to said passengers at Dress Memorial Airport by the EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT.

25. Said Ordinance Number 33 will impose an undue and unreasonable burden upon the commerce among the several states and is in direct violation of Article 1, Section 8, Clause 3, of the Constitution of the United States (Commerce Clause), in that:

- a. Said ordinance is applied arbitrarily and unreasonably upon passengers traveling in interstate commerce without reference to the reasonable value of the services and facilities purportedly furnished said passengers, said charge being, in reality, a head tax imposed upon said interstate air line passengers as a condition of their departure from the State of Indiana and from Vanderburgh County in that State via the Dress Memorial Airport.
- b. Said ordinance, by its application solely to a single class of users of said airport, which class consists primarily of passengers traveling in interstate commerce, creates an undue and unreasonable burden upon interstate commerce.

26. Said Ordinance Number 33 will impose an undue and unreasonable burden upon the commerce among the several states in direct violation of Article 1, Section 8, Clause 3 of the Constitution of the United States (Commerce Clause), will deprive plaintiff Airlines of the equal protection of the laws in direct violation of Amendment Fourteen to the Constitution of the United States and will deprive plaintiff Airlines of property without due process of law in violation of Amendment Fourteen to the Constitution of the United States, in that passengers will be deterred from traveling in interstate commerce from said airport. The imposition of said illegal and unconstitutional charge will penalize passengers seeking to depart Evansville and the State of Indiana by air, will induce passengers entirely to forego travel between the States, or to travel by commercial aircraft from other airports, or to travel by means of conveyance other than commercial aircraft, all to the diminution and impairment of interstate commerce and of plaintiff Airlines' businesses as carriers of passengers in interstate commerce.

27. The collection of said illegal and unconstitutional charges, as required by said Ordinance Number 33, will cause plaintiff Airlines to suffer great expense and inconvenience, resulting in serious impairment of plaintiff Airlines' businesses, by reason of which plaintiff Airlines will be deprived of property without due process of law in violation of Amendment Fourteen to the Constitution of the United States.

28. By reason of said unconstitutionality, the collection of said charges by plaintiff Airlines under said ordinance will expose plaintiff Airlines to liability and multiple lawsuits brought against plaintiffs for relief from the unconstitutional imposition of said charge

and for reimbursement thereof by interstate passengers compelled by plaintiff Airlines to pay said charge.

29. The failure of or refusal by plaintiff Airlines to collect the unconstitutional charge imposed by said ordinance will expose plaintiff Airlines, and their employees and agents, to criminal liability under the following provisions of the Indiana Statute creating the EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT, to-wit:

"Any person who violates any of the provisions of this act, regulation, or ordinance enacted pursuant thereto, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$10.00 and not more than \$300.00, or by imprisonment of not more than six months, or both." (Burns' Ind. Ann. Stats. (1964 Repl.) Section 14-1234).

30. That by reason of the foregoing, the plaintiff Airlines allege that enforcement of said Ordinance Number 33 will, if not enjoined, cause great injury and damage to plaintiffs and to plaintiff Airlines' interstate air line customers, for which there is no adequate remedy, at law or in equity, other than such as can be granted by this Court through the medium of injunction.

31. If plaintiff Airlines are required to enforce said ordinance and collect the charges imposed thereby beginning on July 1, 1968, the illegal and unconstitutional collection of said charges from air line passengers traveling in interstate commerce, or the refusal to collect said illegal charges, will, unless restrained without notice and enjoined by this Court, expose plaintiff Airlines and their employees and agents to immediate liability thereby causing substantial injury to plaintiffs,

their employees and agents, and to their commercial air line businesses, all in violation of plaintiff Airlines' rights for which they have no adequate remedy at law.

32. That the illegality of the conduct required of plaintiff Airlines under said ordinance and resulting exposure to plaintiff Airlines of great and irreparable injury is of such a grave and serious nature as to require the issuance forthwith by this Court of a temporary restraining order without notice to the defendants, or any of them, to preserve the status quo and to prevent immediate injury to plaintiff Airlines.
33. That plaintiff Airlines will provide an undertaking with adequate surety in an amount to be fixed by this Court sufficient to recompense the defendants for any loss, expense, or damage caused by the improvident or erroneous issuance of a temporary restraining order or temporary injunction.

WHEREFORE, plaintiff Airlines pray as follows:

A. That an order be entered herein without notice by this Court restraining and enjoining until further order of this Court or until such time as a hearing on plaintiff Airlines' application for a temporary injunction may be had, the defendants named in the above and foregoing complaint and each of them, and all employees and agents of the defendants, from:

1. Implementing the execution of said Ordinance Number 33 on its effective date of July 1, 1968, or at any time thereafter and from taking any steps to enforce the provisions of said ordinance in any manner;
2. Requiring, compelling, demanding, or otherwise requesting that plaintiff Airlines, and their em-

ployees and agents, make any collection of the charges imposed by said Ordinance Number 33 on July 1, 1968, or at any time thereafter, and from otherwise taking any action or causing any action to be taken against plaintiff Airlines, and their employees and agents, inconsistent with the order of this Court that said Ordinance Number 33 not be enforced on July 1, 1968, or at any time, thereafter.

3. Instituting or causing to be instituted any criminal proceedings against plaintiff Airlines, or their employees and agents, for the non-collection of the charges imposed by said Ordinance Number 33;
4. Otherwise taking any action, because of the non-collection of said charges imposed by Ordinance Number 33, direct or indirect, which would in any manner interfere with the operation by plaintiff Airlines of their businesses in Vanderburgh County, Indiana;
5. Requiring, compelling, demanding, or otherwise requesting, directly or indirectly, that any air passengers departing from Dress Memorial Airport make payments of the charges imposed by said Ordinance Number 33 on July 1, 1968, or at any time thereafter; from otherwise taking any action or causing any action to be taken against any air passengers inconsistent with the order of this Court that said Ordinance Number 33 not be enforced on July 1, 1968, or at any time thereafter; and from taking any action whatsoever because of the non-payment of said charges imposed by Ordinance Number 33, direct or indirect,

which would in any manner interfere with the use of the airport facilities by said passengers and their departures from Dress Memorial Airport.

- B. That a hearing on plaintiff Airlines' application for a temporary injunction be held on or before the 31st day of July, 1968, and after such hearing that a temporary injunction be issued granting the relief herein above prayed for.
- C. That upon final hearing a permanent injunction be issued granting the relief prayed for in Paragraph A of this prayer and granting the plaintiff Airlines' costs in such amount as the Court may determine.
- D. That this Court enter an order declaring said Ordinance Number 33 to be unconstitutional under Article 1, Section 8, Clause 3 of the Constitution of the United States.
- E. That the plaintiff Airlines have such further relief in the premises as may be just and equitable.

DELTA AIR LINES, INC.  
EASTERN AIRLINES  
LAKE CENTRAL AIRLINES, INC.  
s / Fred P. Bamberger  
Fred P. Bamberger  
s / Jeffrey R. Kinney  
Jeffrey R. Kinney

Of Counsel:

BAMBERGER, FOREMAN,  
OSWALD AND HAHN  
708 Hulman Building  
Evansville, Indiana 47708

Robert C. Barnard  
John K. Mallory, Jr.  
CLEARY, GOTTLIEB, STEEN  
AND HAMILTON  
1250 Connecticut Ave., N.W.  
Washington, D.C. 20036  
Attorneys for Plaintiffs

#### PARAGRAPH II

Plaintiffs DELTA AIR LINES, INC., EASTERN AIRLINES, and LAKE CENTRAL AIRLINES, INC., hereinafter sometimes referred to as "plaintiff Airlines," for their second cause of action allege and say:

1. Plaintiff Airlines hereby adopt and reallege and incorporate by reference the allegations contained in rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 of Paragraph I of their complaint as if herein set out in full.
2. Said Ordinance Number 33 denies and restrains citizens of the United States from exercising their right and privilege to move unhampered, unimpeded, and without restriction or restraint to and through the various states of the United States and is in direct violation and contravention of the Privileges and Immunities, Equal Protection, and Due Process Clauses of Amendment Fourteen of the Constitution of the United States, said ordinance and charge imposed thereby being applied arbitrarily and discriminatorily upon interstate air line passengers thereby denying them their constitutional rights and privileges and immunities as aforesaid by compelling them to pay, as a condition for their departure from the State of Indiana via Dress Memorial Airport into interstate commerce, said charge which has no reasonable basis in fact to the services and facilities purportedly furnished

said passengers, said charge being, in reality, a head tax imposed upon said interstate air line passengers as a condition for their departure from the State of Indiana via Dress Memorial Airport.

3. By reason of said unconstitutionality, the collection of said charges by plaintiff Airlines under said ordinance will expose plaintiff Airlines to liability and multiple, lawsuits brought against plaintiff Airlines for relief from the unconstitutional imposition of said charge and for reimbursement thereof by interstate passengers compelled by plaintiffs to pay said charge.

4. The collection of said illegal and unconstitutional charges, as required by said Ordinance Number 33, will cause plaintiff Airlines to suffer great expense and inconvenience, resulting in serious impairment of plaintiff Airlines' businesses, by reason of which plaintiff Airlines will be deprived of property without due process of law in violation of Amendment Fourteen to the Constitution of the United States.

5. The failure of or refusal by plaintiff Airlines to collect, or the failure or refusal of plaintiff Airlines' passengers to pay, the unconstitutional charge imposed by said ordinance will result in plaintiff Airlines' passengers being denied transportation by plane, or, if allowed to enplane, will expose plaintiff Airlines, their employees and agent and passengers, to criminal liability under the following provisions of the Indiana Statute creating the EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT, to-wit:

"Any person who violates any of the provisions of this act, regulation, or ordinance enacted pursuant thereto, shall be guilty of a misdemeanor, and upon conviction shall be punished

by a fine of not less than \$10.00 and not more than \$300.00, or by imprisonment of not more than six months, or both." (Burns' Ind. Ann. Stats. (1964 Repl.) Section 14-1234).

6. That by reason of the foregoing, the plaintiff Airlines allege that enforcement of said Ordinance Number 33 will, if not enjoined, cause great injury and damage to plaintiff Airlines and to plaintiff Airlines' interstate air line customers, for which there is no adequate remedy, at law or in equity, other than such as can be granted by this Court through the medium of injunction.
7. If plaintiff Airlines are required to enforce said ordinance and collect the charges imposed thereby beginning on July 1, 1968, the illegal and unconstitutional collection of said charges from air line passengers traveling in interstate commerce, or the refusal to collect illegal charges, will, unless restrained without notice and enjoined by this Court, expose plaintiff Airlines, and their employees and agents, to immediate liability thereby causing substantial injury to plaintiffs, their employees and agents, and to their commercial air line businesses, all in violation of plaintiff Airlines' rights for which they have no adequate remedy at law.
8. If said Ordinance Number 33 is enforced, plaintiff Airlines' passengers who are citizens of the United States traveling in interstate commerce will be immediately inhibited and injured in their right to travel freely between the States and from place to place within the State of Indiana and will be placed in danger of arrest and prosecution for failure or refusal to pay the charge thereby imposed.

9. The magnitude of the violation of said passengers' rights secured to them by the Constitution of the United States and the resulting exposure of said passengers to grave and irreparable injury is of such a grave and serious nature as to require the issuance forthwith by this Court of a temporary restraining order without notice to the defendants, or any of them, to preserve the status quo and to prevent immediate injury.

10. That the illegality of the conduct required of plaintiff Airlines under said ordinance and resulting exposure of plaintiffs to great and irreparable injury is of such a grave and serious nature as to require the issuance forthwith by this Court of a temporary restraining order without notice to the defendants, or any of them, to preserve the status quo and to prevent immediate injury to plaintiff Airlines.

11. That plaintiff Airlines will provide an undertaking with adequate surety in an amount to be fixed by this Court sufficient to recompense the defendants for any loss, expense, or damage caused by the improvident or erroneous issuance of a temporary restraining order or temporary injunction.

WHEREFORE, plaintiff Airlines pray as follows:

A. That an order be entered herein without notice by this Court restraining and enjoining until further order of this Court or until such time as a hearing on plaintiff Airlines' application for a temporary injunction may be had, the defendants named in the above and foregoing complaint and each of them, and all employees and agents of the defendants, from:

1. Implementing the execution of said Ordinance Number 33 on its effective date of July 1, 1968, or

at any time thereafter and from taking any steps to enforce the provisions of said ordinance in any manner;

2. Requiring, compelling, demanding, or otherwise requesting that plaintiff Airlines, and their employees and agents, make any collection of the charges imposed by said Ordinance Number 33 on July 1, 1968, or at any time thereafter, and from otherwise taking any action or causing any action to be taken against plaintiff Airlines, and their employees and agents, inconsistent with the order of this Court that said Ordinance Number 33 not be enforced on July 1, 1968, or at any time thereafter;
3. Instituting or causing to be instituted any criminal proceedings against plaintiff Airlines, or their employees and agents, for the non-collection of the charges imposed by said Ordinance Number 33;
4. Otherwise taking any action, because of the non-collection of said charges imposed by Ordinance Number 33, direct or indirect, which would in any manner interfere with the operation by plaintiff Airlines of their businesses in Vanderburgh County, Indiana;
5. Requiring, compelling, demanding, or otherwise requesting, directly or indirectly, that any air passengers departing from Dress Memorial Airport make payments of the charges imposed by said Ordinance Number 33 on July 1, 1968, or at any time thereafter; from otherwise taking any action or causing any action to be taken against any air passengers inconsistent with the order of

this Court that said Ordinance Number 33 not be enforced on July 1, 1968, or at any time thereafter; and from taking any action whatsoever because of the non-payment of said charges imposed by Ordinance Number 33, direct or indirect, which would in any manner interfere with the use of the airport facilities by said passengers and their departures from Dress Memorial Airport.

B. That a hearing on plaintiff Airlines' application for a temporary injunction be held on or before the 31st day of July, 1968, and after such hearing that a temporary injunction be issued granting the relief herein above prayed for.

C. That upon final hearing a permanent injunction be issued granting the relief prayed for in Paragraph A of this prayer and granting the plaintiff Airlines' costs in such amount as the Court may determine.

D. That this Court enter an order declaring said Ordinance Number 33 to be unconstitutional under the Privileges and Immunities, Equal Protection, and Due Process Clauses of the Constitution of the United States.

E. That the plaintiff Airlines have such further relief in the premises as may be just and equitable.

DELTA AIR LINES, INC.

EASTERN AIRLINES

LAKE CENTRAL AIRLINES, INC.

s / Fred P. Bamberger

Fred P. Bamberger

s / Jeffrey R. Kinney

Jeffrey R. Kinney

**Of Counsel:**

**BAMBERGER, FOREMAN,  
OSWALD AND HAHN**

**708 Hulman Building**

**Evansville, Indiana 47708**

**Robert C. Barnard**

**John K. Mallory, Jr.**

**CLEARY, GOTTLIEB, STEEN  
AND HAMILTON**

**1250 Connecticut Ave., N.W.**

**Washington, D.C. 20036**

***Attorneys for Plaintiffs***

**PARAGRAPH III**

Plaintiffs DELTA AIR LINES, INC., EASTERN AIRLINES, and LAKE CENTRAL AIRLINES, INC., hereinafter sometimes referred to as "plaintiff Airlines," for their third cause of action allege and say:

1. Plaintiff Airlines hereby adopt and reallege and incorporate by reference the allegations contained in rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of Paragraph I of their complaint as if herein set out in full.

2. Said Ordinance Number 33 imposes an arbitrary and discriminatory charge upon air line passengers departing Dress Memorial Airport and is in direct violation and contravention of the Equal Protection Clause of Amendment Fourteen of the Constitution of the United States and Article 1, Section 23, of the Constitution of the State of Indiana, said ordinance imposing a charge upon enplaning air line passengers who are a minority class of users of the airport facilities purportedly for the use of airport facilities, but said ordinance not imposing any charge upon deplan-

ing passengers and other persons and corporations making like use of airport facilities either for transportation, air freight shipments, observation, dining and other uses, said charge additionally having no reasonable relation to the services and facilities purportedly furnished said passengers and being wholly arbitrary and unreasonable.

3. By reason of said unconstitutionality, the collection of said charges by plaintiff Airlines under said ordinance will expose plaintiff Airlines to liability and multiple lawsuits brought against plaintiff Airlines for relief from the unconstitutional imposition of said charge and for reimbursement thereof by interstate passengers compelled by plaintiffs to pay said charge.

4. The failure of or refusal by plaintiff Airlines to collect the unconstitutional charge imposed by said ordinance will expose plaintiffs, and their employees and agents, to criminal liability under the following provisions of the Indiana Statute creating the EV-ANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT, to-wit:

"Any person who violates any of the provisions of this act, regulation, or ordinance enacted pursuant thereto, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$10.00 and not more than \$300.00, or by imprisonment of not more than six months, or both." (Burns' Ind. Ann. Stats. (1964 Repl.) Section 14-1234).

5. That by reason of the foregoing, the plaintiff Airlines allege that enforcement of said Ordinance Number 33 will, if not enjoined, cause great injury and damage to plaintiff Airlines and to plaintiff Airlines'

interstate air line customers, for which there is no adequate remedy, at law or in equity, other than such as can be granted by this Court through the medium of injunction.

6. If plaintiff Airlines are required to enforce said ordinance and collect the charges imposed thereby beginning on July 1, 1968, the illegal and unconstitutional collection of said charges from air line passengers traveling in interstate commerce, or the refusal to collect said illegal charges, will, unless restrained without notice and enjoined by this Court, expose plaintiff Airlines and their employees and agents to immediate liability thereby causing substantial injury to plaintiff Airlines, their employees and agents, and to their commercial air line businesses, all in violation of plaintiff Airlines' rights for which they have no adequate remedy at law.

7. That the illegality of the conduct required of plaintiff Airlines under said ordinance and resulting exposure of plaintiffs to great and irreparable injury is of such a grave and serious nature as to require the issuance forthwith by this Court of a temporary restraining order without notice to the defendants, or any of them, to preserve the status quo and to prevent immediate injury to plaintiff Airlines.

8. That plaintiff Airlines will provide an undertaking with adequate surety in an amount to be fixed by this Court sufficient to recompense the defendants for any loss, expense, or damage caused by the improvident or erroneous issuance of a temporary restraining order, temporary injunction or permanent injunction.

WHEREFORE, plaintiff Airlines pray as follows:

A. That an order be entered herein without notice by this Court restraining and enjoining until further

order of this Court or until such time as a hearing on plaintiff Airlines' application for a temporary injunction may be had, the defendants named in the above and foregoing complaint and each of them, and all employees and agents of the defendants, from:

1. Implementing the execution of said Ordinance Number 33 on its effective date of July 1, 1968, or at any time thereafter and from taking any steps to enforce the provisions of said ordinance in any manner;
2. Requiring, compelling, demanding, or otherwise requesting that plaintiff Airlines, and their employees and agents, make any collection of the charges imposed by said Ordinance Number 33 on July 1, 1968, or at any time thereafter, and from otherwise taking any action or causing any action to be taken against plaintiff Airlines, and their employees and agents, inconsistent with the order of this Court that said Ordinance Number 33 not be enforced on July 1, 1968, or at any time thereafter;
3. Instituting or causing to be instituted any criminal proceeding against plaintiff Airlines, or their employees and agents, for the non-collection of the charges imposed by said Ordinance Number 33;
4. Otherwise taking any action, because of the non-collection of said charges imposed by Ordinance Number 33, direct or indirect, which would in any manner interfere with the operation by plaintiff Airlines of their businesses in Vanderburgh County, Indiana;
5. Requiring, compelling, demanding, or otherwise requesting, directly or indirectly, that any air

passengers departing from Dress Memorial Airport make payments of the charges imposed by said Ordinance Number 33 on July 1, 1968, or at any time thereafter; from otherwise taking any action or causing any action to be taken against any air passengers inconsistent with the order of this Court that said Ordinance Number 33 not be enforced on July 1, 1968, or at any time thereafter; and from taking any action whatsoever because of the non-payment of said charges imposed by Ordinance Number 33, direct or indirect, which would in any manner interfere with the use of the airport facilities by said passengers and their departures from Dress Memorial Airport.

B. That a hearing on plaintiff Airlines' application for a temporary injunction be held on or before the 31st day of July, 1968, and after such hearing that a temporary injunction be issued granting the relief herein above prayed for.

C. That upon final hearing a permanent injunction be issued granting the relief prayed for in Paragraph A of this prayer and granting the plaintiff Airlines' costs in such amount as the Court may determine.

D. That this Court enter an order declaring said Ordinance Number 33 to be unconstitutional under the Equal Protection Clauses of Amendment Fourteen of the Constitution of the United States and Article 1, Section 23 of the Constitution of the State of Indiana.

E. That the plaintiff Airlines have such further relief in the premises as may be just and equitable.

DELTA AIR LINES, INC.  
EASTERN AIRLINES  
LAKE CENTRAL AIRLINES, INC.

s / Fred P. Bamberger  
Fred P. Bamberger  
s / Jeffrey R. Kinney  
Jeffrey R. Kinney

Of Counsel:

BAMBERGER, FOREMAN,  
OSWALD AND HAHN  
708 Hulman Building  
Evansville, Indiana 47708  
Robert C. Barnard  
John K. Mallory, Jr.  
CLEARY, GOTTLIEB, STEEN  
AND HAMILTON  
1250 Connecticut Ave., N.W.  
Washington, D.C. 20036

*Attorneys for Plaintiffs*

#### PARAGRAPH IV

Plaintiffs DELTA AIR LINES, INC., EASTERN AIRLINES, and LAKE CENTRAL AIRLINES, INC., hereinafter sometimes referred to as "plaintiff Airlines," for their fourth cause of action allege and say:

1. Plaintiff Airlines hereby adopt and reallege and incorporate by reference the allegations contained in rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 of Paragraph I of their complaint as if herein set out in full.
2. That the charge imposed by said ordinance bears no reasonable relation to any facilities or services purportedly furnished to enplaning air line passengers and has no basis in fact, the charge of One Dollar (\$1.00) being wholly arbitrary and not taking into consideration the different and varied uses and non-uses

of airport facilities, or the actual needs for revenue for the maintenance and operation of said airport.

3. That, additionally, said charge is wholly discriminatory and places the entire levy upon only a minority class of the persons using said airport facilities, deplaning air passengers and other persons and corporations using the airport facilities for non-commercial flights, air freight shipments, observation, dining and other uses not being required to pay any charge whatsoever.

4. That the statute which is purportedly the authority for the enactment of said ordinance and the imposition of said charge (Burns' Ind. Ann. Stats. (1946 Repl.) Section 14-1215, Clauses 9 and 16) does not, in fact, contain legislative authorization for the enactment of an ordinance imposing an arbitrary and discriminatory charge upon enplaning air line passengers, said charge being, in reality, a wholly arbitrary, discriminatory, and unreasonable head tax levied against a minority class of airport users.

5. That, by reason of the foregoing, the ordinance imposing said charge is wholly illegal as an ultra vires act of the defendant EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT, there being no statutory delegation by the General Assembly of the State of Indiana of the power to enact such an ordinance and levy the charge imposed thereunder, said Ordinance Number 33 therefore being wholly void for want of jurisdiction.

6. That, additionally, the imposition of said charge which is in reality a tax imposed upon enplaning air passengers, who are a minority class of airport users, is in direct violation and contravention of Article 10,

Section 1, of the Constitution of the State of Indiana, said tax not being provided for by the General Assembly of the State of Indiana, the power to impose such a tax not being delegated by the General Assembly of the State of Indiana, and the tax not being uniformly and equally imposed upon all persons who make use of facilities at Dress Memorial Airport.

7. By reason of said illegality and unconstitutionality, the collection of said charges by plaintiff Airlines under said ordinance will expose plaintiff Airlines to liability and multiple lawsuits brought against plaintiff Airlines for relief from the illegal and unconstitutional imposition of said charge and for reimbursement thereof by air passengers compelled by plaintiffs to pay said charge.

8. The failure of or refusal by plaintiff Airlines to collect the illegal charge imposed by said ordinance will expose plaintiff Airlines, and their employees and agents, to criminal liability under the following provisions of the Indiana Statute creating the EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT, to-wit:

"Any person who violates any of the provisions of this act, regulation, or ordinance enacted pursuant thereto, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$10.00 and not more than \$300.00, or by imprisonment of not more than six months, or both." (Burns' Ind. Ann. Stats. (1964 Repl.) Section 14-1234).

9. That by reason of the foregoing, the plaintiff Airlines allege that enforcement of said Ordinance Number 33 will, if not enjoined, cause great injury and damage to plaintiff Airlines and to plaintiff Air-

lines' interstate air line customers, for which there is no adequate remedy, at law or in equity, other than such as can be granted by this Court through the medium of injunction.

10. If plaintiff Airlines are required to enforce said ordinance and collect the charges imposed thereby beginning on July 1, 1968, the illegal collection of said charges from air line passengers traveling in interstate commerce, or the refusal to collect said illegal charges, will, unless restrained without notice and enjoined by this Court, expose plaintiff Airlines and their employees and agents to immediate liability thereby causing substantial injury to plaintiff Airlines, their employees and agents, and to their commercial air line businesses, all in violation of plaintiff Airlines' rights for which they have no adequate remedy at law.

11. That the illegality of the conduct required of plaintiff Airlines under said ordinance and resulting exposure of plaintiffs to great and irreparable injury is of such a grave and serious nature as to require the issuance forthwith by this Court of a temporary restraining order without notice to the defendants, or any of them, to preserve the status quo and to prevent immediate injury to plaintiff Airlines.

12. That plaintiff Airlines will provide an undertaking with adequate surety in an amount to be fixed by this Court sufficient to recompense the defendants for any loss, expense, or damage caused by the improvident or erroneous issuance of a temporary restraining order, temporary order, or temporary injunction.

WHEREFORE, plaintiff Airlines pray as follows:

A. That an order be entered herein without notice by this Court restraining and enjoining until further

order of this Court or until such time as a hearing on plaintiff Airlines' application for a temporary injunction may be had, the defendants named in the above and foregoing complaint and each of them, and all employees and agents of the defendants, from:

1. Implementing the execution of said Ordinance Number 33 on its effective date of July 1, 1968, or at any time thereafter and from taking any steps to enforce the provisions of said ordinance in any manner;
2. Requiring, compelling, demanding, or otherwise requesting that plaintiff Airlines, and their employees and agents, make any collection of the charges imposed by said Ordinance Number 33 on July 1, 1968, or at any time thereafter, and from otherwise taking any action or causing any action to be taken against plaintiff Airlines, and their employees and agents, inconsistent with the order of this Court that said Ordinance Number 33 not be enforced on July 1, 1968, or any time thereafter;
3. Instituting or causing to be instituted any criminal proceedings against plaintiff Airlines, or their employees and agents, for the non-collection of the charges imposed by said Ordinance Number 33;
4. Otherwise taking any action, because of the non-collection of said charges imposed by Ordinance Number 33, direct or indirect, which would in any manner interfere with the operation by plaintiff Airlines of their businesses in Vanderburgh County, Indiana;
5. Requiring, compelling, demanding, or otherwise

requesting, directly or indirectly, that any air passengers departing from Dress Memorial Airport make payments of the charges imposed by said Ordinance Number 33 on July 1, 1968, or at any time thereafter; from otherwise taking any action or causing any action to be taken against any air passengers inconsistent with the order of this Court that said Ordinance Number 33 not be enforced on July 1, 1968, or at any time thereafter; and from taking any action whatsoever because of the non-payment of said charges imposed by Ordinance Number 33, direct or indirect, which would in any manner interfere with the use of the airport facilities by said passengers and their departures from Dress Memorial Airport.

B. That a hearing on plaintiff Airlines' application for a temporary injunction be held on or before the 31st day of July, 1968, and after such hearing that a temporary injunction be issued granting the relief herein above prayed for.

C. That upon final hearing a permanent injunction be issued granting the relief prayed for in Paragraph A of this prayer and granting the plaintiff Airlines' costs in such amount as the Court may determine.

D. That this Court enter an order declaring said Ordinance Number 33 to be illegal and void by reason of the non-existence of delegated legislative authority for the enactment of such ordinance and unconstitutional as in violation of Article 10, Section 1, of the Constitution of the State of Indiana.

E. That the plaintiff Airlines have such further relief in the premises as may be just and equitable.

DELTA AIR LINES, INC.  
EASTERN AIRLINES  
LAKE CENTRAL AIRLINES, INC.  
s / Fred P. Bamberger  
Fred P. Bamberger  
s / Jeffrey R. Kinney  
Jeffrey R. Kinney

Of Counsel:

BAMBERGER, FOREMAN,  
OSWALD AND HAHN  
Evansville, Indiana 47708  
Robert C. Barnard  
John K. Mallory, Jr.  
CLEARY, GOTTLIEB, STEEN  
AND HAMILTON  
1250 Connecticut Ave., N.W.  
Washington, D.C. 20036  
ATTORNEYS FOR PLAINTIFFS  
*Attorneys for Plaintiffs*

(Verification omitted in printing.)

EVANSVILLE-VANDERBURGH AIRPORT  
AUTHORITY DISTRICT

ORDINANCE NO. 33

AN ORDINANCE ESTABLISHING AND FIXING  
A USE AND SERVICE CHARGE FOR ALL EN-  
PLANING PASSENGERS UTILIZING AIRPORT  
PREMISES AND FACILITIES.

WHEREAS, the Acts of the Indiana General Assembly, 1959, Chapter 15, Section 30, provides that the acquiring, establishment, construction, improvements, equipment and maintenance and the control and operation of Airports and landing fields for aircraft under and pursuant to the Act creating the Evansville-Vanderburgh Airport Authority District, shall and are hereby declared to be a governmental function of general public necessity and benefit, and shall be for the use and general welfare of all of the people of the State of Indiana, as well as all of the people residing in the District of said Board, the same being coterminous with the boundaries of Vanderburgh County, Indiana, and

WHEREAS, the Evansville-Vanderburgh Airport Authority District was duly created under and pursuant to the terms and provisions of the Acts of the Indiana General Assembly, 1959, Chapter 15, and upon its creation and establishment, said Airport Authority District assumed the responsibility for the care, construction, improvement, equipment, maintenance and control of the Dress Memorial Airport located in Evansville, Vanderburgh County, Indiana; and

WHEREAS, the Board of Evansville-Vanderburgh Airport Authority District is empowered, pursuant to

said Acts of the Indiana General Assembly, to enact ordinances for the purpose of adopting a schedule of rates and charges and to collect the same from all users of facilities and services provided by said Dress Memorial Airport; and

WHEREAS, the Evansville-Vanderburgh Airport Authority District, pursuant to said Acts of the Indiana General Assembly, has the further power to fix, charge and collect rentals, tolls, fees and charges to be paid for the use of the whole or any part or parts of said Dress Memorial Airport and to fix, charge and collect fees for public admission and privileges; and

WHEREAS, the Board of Evansville-Vanderburgh Airport Authority District has determined, upon investigation, that the use of said Airport and its various facilities is enjoyed by persons and taxpayers not only residing in Vanderburgh County, Indiana, but by numerous persons residing outside the jurisdiction of said District who do not directly contribute toward the support, construction, improvement, equipment, maintenance and control of said Airport and its facilities; and

WHEREAS, the Board of said Airport Authority District has determined that there exists a need for additional revenue with which to defray the continued and future costs of construction, improvement, equipment and maintenance of said Airport so as to provide for the reasonable safety, convenience and comfort of enplaning passengers using the facilities of Dress Memorial Airport; and

WHEREAS, the Board of said Evansville-Vanderburgh Airport Authority District, after due and deliberate consideration, has determined that the responsibility for the support, construction, improvement,

equipment and maintenance of said Airport and its facilities, lies and should be shared more equally by all those persons who enjoy and use its facilities and services;

NOW, THEREFORE, BE IT RESOLVED by the Board of Evansville-Vanderburgh Airport Authority District as follows:

**Section 1.** Commencing on July 1, 1968, there is hereby fixed, created and established a use and service charge of One Dollar (\$1.00) for each passenger enplaning any commercial aircraft operated from the Dress Memorial Airport.

**Section 2.** Each commercial airline now or hereafter operating commercial Aircraft to and from the Dress Memorial Airport is hereby charged, together with its various agents and travel agencies, servants, employees and representatives, with the responsibility of collecting said use and service charge.

**Section 3.** Said commercial airlines are hereby further directed to remit to Evansville-Vanderburgh Airport Authority District all the use and service charges so collected:

- (a) for the period commencing July 1 and terminating December 31 of each year, on or before January 31 next following said six month period;
- (b) for the period commencing January 31 and terminating June 30 of each year, on or before July 31 next following said six month period.

Said remittances shall be based upon the number of enplaning passengers at Dress Memorial Airport as hereinabove described in Section 2 of this Ordinance, times the use and service charge of One Dollar (\$1.00), less six percent (6%) of all amounts so collected, which percentage is hereby allocated and allowed to said air-

lines for the purpose of defraying the administrative costs of collecting and remitting said use and service charge.

**Section 4.** The term "each passenger enplaning any commercial aircraft operated from the Dress Memorial Airport" shall not include, nor shall the use and service charge hereby created, apply to any active member of the United States Armed Forces enplaning aircraft at the Dress Memorial Airport, or any person purchasing an airline ticket having, as an initial point of departure, a locality other than Dress Memorial Airport, and whose flight either terminates or requires an intermediate or temporary stop at Dress Memorial Airport.

**Section 5.** All revenue collected from said use and service charges shall be held by the Evansville-Vanderburgh Airport Authority District in a separate fund for the purpose of defraying the present and future costs incurred by said Airport Authority in the construction, improvement, equipment, and maintenance of said Airport and its facilities for the continued use and future enjoyment by all users thereof.

**Section 6.** If any provision or clause of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**Section 7.** This Ordinance shall be in full force and effect upon its passage and approval by the Board of Evansville-Vanderburgh Airport Authority District as provided by law, and shall remain in effect until amended, modified or revoked by the Board of said District.

PASSED by the Board of Evansville-Vanderburgh Airport Authority District on this 26th day of February, 1968, and on said day signed by the President and attested by the Secretary of Evansville-Vanderburgh Airport Authority District.

s / Kenneth C. Kent  
Kenneth C. Kent, President

ATTEST:

s / Robert M. Leich  
Robert M. Leich, Secretary

STATE OF INDIANA

COUNTY OF VANDERBURGH

) SS:

I, the undersigned, Secretary of the Evansville-Vanderburgh Airport Authority District, do hereby certify that the attached Ordinance No. 33 consisting of four pages is a full, true, and correct copy of Ordinance No. 33 which was passed by the Board of Directors of the Evansville-Vanderburgh Airport Authority District on February 26, 1968.

I further certify that the attached Ordinance No. 33 is presently in force and will take effect on the first day of July, 1968.

s / Robert M. Leich  
Robert M. Leich, Secretary  
Evansville-Vanderburgh Airport  
Authority District

SUBSCRIBED and SWORN to before me, a Notary

Public, in and for said County and State this 24th day  
of June, 1968.

s/ Howard P. Trockman  
Howard P. Trockman  
Notary Public

My Commission expires:  
1-8-72

**PARTIES' STIPULATION OF FACTS SUBMITTED  
TO VANDERBURGH SUPERIOR COURT  
(R. 469)**

(Caption Omitted in Printing)

### **STIPULATION OF FACTS FOR HEARING ON TEMPORARY INJUNCTION**

It is agreed by the parties that the following statement of facts is true, and it is further stipulated and agreed that the Court may consider the same as the facts of this case for the hearing on plaintiffs' application for a temporary injunction, and it is specially stipulated and agreed that the Court may draw inferences and deductions from said facts in the same manner as when evidence is introduced in the ordinary way. It is further stipulated and agreed that any of the parties may object to any stipulated facts urging the ground that such facts are irrelevant and immaterial, but they do agree that all said facts are true:

#### **A. FACTS SUBMITTED BY PLAINTIFFS**

1. Delta Air Lines, Inc., is a corporation organized under the laws of the State of Louisiana and is duly authorized to transact business in the State of Indiana.
2. Eastern Airlines is a corporation organized under the laws of the State of Delaware and is duly authorized to transact business in the State of Indiana.
3. Allegheny Airlines, Inc., successor to Lake Central Airlines, Inc., is a corporation organized under the laws of the State of Delaware and is duly authorized to transact business in the State of Indiana.
4. The Evansville-Vanderburgh Airport Authority District is the owner and operator of Dress Memorial Airport in Vanderburgh County, Indiana.
5. Kenneth C. Kent, Elmo Holder, Robert M. Leich, Ian F. Lockhart, and Clifford K. Arden are members

of the Board of Directors of the Evansville-Vanderburgh Airport Authority District.

6. James A. Geyer is the airport manager of Dress Memorial Airport and is the Treasurer of the Evansville-Vanderburgh Airport Authority District.

7. Eastern Airlines and Allegheny Airlines, Inc., are commercial air carriers transporting passengers, freight, express, and mail to and from Dress Memorial Airport solely in interstate commerce. Delta Air Lines, Inc., is a commercial air carrier transporting passengers, freight, express, and mail to and from Dress Memorial Airport in interstate and intrastate commerce. Each of the plaintiff airlines are air carriers operating under Certificates of Public Convenience and Necessity issued by the Civil Aeronautics Board and are duly authorized pursuant to said Certificates to operate commercial aircraft and to enplane and deplane commercial air passengers, express, freight, and mail therefrom at Dress Memorial Airport between specified cities set forth in said Certificates. Each of the plaintiff airlines leases and operates facilities at Dress Memorial Airport for the purposes of providing commercial air passenger and freight service. The facilities operated by the plaintiff airlines include air passenger ticket counters, offices, storage space and other facilities. Exhibits 1, 2 and 3 which are attached hereto are true and correct copies of said leases which are now in force.

8. On June 28, 1968, Delta Air Lines, Inc., operated nine (9) regularly scheduled flights daily from Dress Memorial Airport, of which three (3) flights were direct flights to locations beyond the State of Indiana; five (5) flights terminated at locations beyond the State of Indiana with intermediate stops in Indiana;

and one (1) flight terminated solely within the State of Indiana. In January, 1969, Delta Air Lines, Inc., was operating nine (9) regularly scheduled daily flights of which five (5) are direct flights to locations beyond the State of Indiana. Three (3) flights terminate at locations beyond the State of Indiana with intermediate stops in Indiana, and one (1) flight terminates in Indiana. During the twelve months preceding December 31, 1967, Delta Air Lines, Inc., carried 73,634 passengers enplaning at Dress Memorial Airport, a majority of whom were carried to destinations beyond the State of Indiana.

9. On June 28, 1968, and continuing through the present time, Eastern Airlines has operated six (6) regularly scheduled flights daily from Dress Memorial Airport, all of which are direct flights to locations beyond the State of Indiana. During the twelve months preceding December 31, 1967, Eastern Airlines carried 59,400 passengers enplaning at Dress Memorial Airport, all of whom were carried to destinations beyond the State of Indiana.

10. On June 28, 1968, Lake Central Air Lines, Inc., operated two (2) regularly scheduled flights daily from Dress Memorial Airport, both of which were direct flights to locations beyond the State of Indiana. In January, 1969, Allegheny Airlines, Inc., successor to Lake Central Airlines, Inc., continues to operate two (2) regularly scheduled flights daily from Dress Memorial Airport which are direct flights to locations beyond the State of Indiana. During the twelve months preceding December 31, 1967, Lake Central Airlines, Inc., carried 13,679 passengers enplaning at Dress Memorial Airport, all of whom were carried to destinations beyond the State of Indiana.

11. During the twelve months preceding June 30, 1967, a total of 128,396 persons departed from Dress Memorial Airport upon scheduled and nonscheduled commercial air carriers.

12. In the year 1967, there were 148,955 enplaning passengers and 145,142 deplaning passengers on air carrier flights at Dress Memorial Airport. In 1967, there were some 14,834 take-offs and landings by commercial air carriers at Dress Memorial Airport. In the same year, there were 84,598 take-offs and landings by other civil and military aircraft, both local and itinerant, as follows:

A. Itinerant take-offs and landings	1,329
B. Itinerant civil take-offs and landings	49,959
C. Local military take-offs and landings	1,077
D. Local civil take-offs and landings	34,639

13. The airport facilities at Dress Memorial Airport include but are not necessarily limited to the following facilities and services:

- (1) Main Terminal Building
  - air passenger service counters
  - air freight service counters and facilities
  - waiting room
  - rest rooms
  - dining room
  - bar
  - lunch counter
  - newsstand
  - barber shop
  - display areas
  - taxi stands
  - car rental counters
  - telephone booths

**(2) Other Facilities**

private hangar facilities  
nonscheduled airline hangar facilities, office  
space, and waiting areas  
entrance and exit facilities and sidewalks  
parking lots  
fuel storage areas  
office space  
runways and taxi-ways  
approach lighting system  
instrument lighting system

14. In addition to the use of one or more of the airport facilities and services by enplaning air passengers, one or more of the foregoing facilities and services are also used by the following persons who are not subject to a \$1.00 service charge imposed upon enplaning passengers:

- a. persons using the airport facilities after arrival at the airport upon commercial aircraft;
- b. persons using the airport facilities and services upon arrival or departure from Dress Memorial Airport by means of noncommercial or nonscheduled aircraft (persons in this category may not ordinarily use the Main Terminal facilities upon arrival or departure but may do so to make use of service facilities located in the Main Terminal Building such as the restaurant, bar, barber shop, taxi stands, car rental stands, etc.);
- c. persons and corporations using the airport facilities to transport and receive air freight shipments;
- d. persons using airport facilities when meeting or seeing off air passengers;

- e. persons using the airport facilities for entertainment purposes and observing the arrival or departure of aircraft;
- f. persons using the airport facilities incidental to the use of dining and bar facilities and other public facilities and services located at said airport; and
- g. other persons making use of the airport facilities who are not departing from said airport.

The classes of persons enumerated in subparagraphs a. through g. numerically constitute a majority of persons who use one or more of the facilities located at said airport.

15. On February 26, 1968, the Board of the Evansville-Vanderburgh Airport Authority District enacted an ordinance known as Ordinance No. 33 which levies a charge of \$1.00 on every enplaning commercial air passenger at Dress Memorial Airport with exceptions for active military personnel and persons temporarily stopping at Dress Memorial Airport enroute to other destinations. Persons arriving at Dress Memorial Airport from some other locality using a round trip ticket written at that other locality would be subject to the \$1.00 service charge upon departure from Dress Memorial Airport regardless of the length of time between their arrival and departure; said service charge would be paid at the time the round trip ticket is purchased.

16. Exhibit 4 which is attached hereto is a true and correct copy of Ordinance No. 33 which was to take effect on July 1, 1968.

17. An air passenger intending to depart Dress Me-

memorial Airport who purchased a ticket and paid the service charge but did not enplane would not be subject to the service charge and would be entitled to a refund thereof.

18. In 1966, 88.4% of the persons departing Dress Memorial Airport upon plaintiff airlines enplaned for ultimate destinations beyond the State of Indiana.

19. At present, the percentage of persons departing Dress Memorial Airport upon plaintiff airlines for ultimate destinations beyond the State of Indiana is approximately the same percentage as is stated in paragraph 18 above although said percentage would be subject to change because of changes in schedules.

20. Some persons desiring to travel by air from Dress Memorial Airport might be deterred therefrom because of the payment of air tariff ticket charges exclusive of any enplanement fee.

21. Exhibit 5 which is attached hereto is a summary of General Fund Revenues of the Evansville-Vanderburgh Airport Authority District for its operations at Dress Memorial Airport for the year 1967.

22. Dress Memorial Airport is the only commercial airport within an area of approximately 100 miles of Evansville, Indiana, with the exception of Owensboro, Kentucky, and said Airport serves a large portion of southeastern Illinois and northwestern Kentucky as well as southwestern Indiana. A substantial number of persons using Dress Memorial Airport are citizens of the States of Kentucky and Illinois, and their journeys originate in those states.

23. If an enplaning air passenger refuses to pay the \$1.00 service charge, the plaintiff airlines have two al-

ternatives. One alternative is to enplane the passenger and pay the charge themselves, assuming the passenger has paid the air travel charge. The second alternative is to refuse to enplane the passenger.

24. The tax levy for the year 1968 imposed by the Evansville-Vanderburgh Airport Authority District on assessed property located in Vanderburgh County, Indiana, is between four and five cents per \$100.00 of assessed valuation. In addition to this levy there was a Cumulative Building Fund Levy of two cents per \$100.00 of assessed valuation.

25. Air passenger tickets for departure (enplane-  
ment) from Dress Memorial Airport can be sold or  
written by the following persons or corporations:

- a. plaintiff airlines through offices in Evansville, Indiana.
- b. plaintiff airlines through offices located in every state in the United States and other locations outside the United States.
- c. other air carriers through offices located in every state in the United States and locations outside the United States.
- d. travel agency offices located in every state in the United States and localities outside the United States.
- e. private persons and corporations located in every state in the United States and locations outside the United States.

26. A substantial number of airline tickets for de-  
parture from Dress Memorial Airport are written by  
travel agencies, private persons and corporations au-  
thorized to write their own tickets, and by other com-

mercial airlines who are authorized to write tickets upon the plaintiff airlines.

27. Because many airline tickets for departures from Dress Memorial Airport are sold by persons and corporations other than the plaintiff airlines, the only effective and practical method by which the plaintiff airlines can be assured that every person boarding one of their aircraft at Dress Memorial Airport pays the \$1.00 service charge is to publish said charge as part of or in addition to their tariffs and rates for departure from Dress Memorial Airport. Plaintiff airlines would incur costs and expenses in effecting tariff charges and providing nationwide accounting and remittance procedures. The costs and expenses of effecting and operating said changes and procedures might or might not exceed the six percent (6%) collection fee permitted the air carriers under Ordinance No. 33.

28. Each of the plaintiff airlines has employees stationed at Dress Memorial Airport who travel both in intrastate and interstate commerce by air on airline business. The transportation costs for said trips are paid by plaintiff airlines, and the plaintiff airlines would directly pay or reimburse their employees for the \$1.00 charge required by Ordinance No. 33 which would be imposed on the enplanement of their employees as passengers on commercial airlines for business trips for plaintiff airlines.

#### B. FACTS SUBMITTED BY DEFENDANT

1. That during the year 1966 there were 120,197 enplaning passengers at Dress Memorial Airport. During the year 1967 there were 146,955 enplaning passengers at Dress Memorial Airport. During both of said years

there were approximately the same number of deplaning passengers at said airport.

2. As of December 31, 1967, there were capital improvement bonds of Dress Memorial Airport outstanding in the principal sum of \$180,000.00 resulting from the issuance of bonds during the year 1960, which bonds will finally be retired on July 1, 1973.

3. As of December 31, 1967, there were bonds outstanding in the principal sum of \$332,000.00 resulting from the issuance of bonds during the year 1960, which bonds will finally be retired on January 1, 1977.

4. As of December 31, 1967, there were bonds outstanding in the principal sum of \$823,000.00 resulting from the issuance of bonds during the year 1960, which bonds will finally be retired on January 1, 1979.

5. As of December 31, 1967, there was a total bonded indebtedness outstanding and payable by Evansville-Vanderburgh Airport Authority District of \$1,335,000.00.

6. On December 23, 1968, the defendant, Evansville-Vanderburgh Airport Authority District, approved and adopted a report of its consultants, Ralph H. Burke, Inc., of Park Ridge, Illinois, which report includes preliminary cost estimates for the expansion of commercial airline passenger claim areas, expansion of the Terminal Building which is used by commercial airlines, its passengers and personnel, and for the reconstruction of the entrance and exit road at said Airport having an estimated cost of \$948,000.00, which report is attached hereto, made a part hereof and identified as "Exhibit A."

7. On said date of December 23, 1968, the Board of Evansville-Vanderburgh Airport Authority District

determined to issue bonds in the sum of \$980,000.00 in order to cover the cost of constructing all the improvements set forth in Stipulation No. 6. The retirement of said bonds will require, on the basis of a 15 year amortization, a yearly principal payment in excess of \$65,000.00 and interest which is payable at a rate of not more than five percent (5%) of the unpaid principal balance. Assuming that a five percent (5%) interest rate would prevail, an interest payment during the first year of amortization of \$49,000.00 would be required. Based on said five percent (5%) interest rate, each subsequent year of amortization would result in a reduction in interest payments of \$3,266.66.

8. On September 24, 1962, the Board of Evansville-Vanderburgh Airport Authority District formally adopted a Master Plan for the development of Dress Memorial Airport, 1962 to 1971, a copy of which said Master Plan is attached hereto, made a part hereof and identified as "Exhibit B." The fulfillment of the capital improvements of said Master Plan and the retirement of the indebtedness created thereby will require more additional revenues than would be produced by Ordinance No. 33 assuming that said improvements are amortized over a 15 year period in the manner set forth in Defendants' Submitted Facts No. 7, and assuming further that the forecast of probable passenger movements at Dress Memorial Airport is reasonably accurate.

9. Ordinance No. 33 imposes a use and service charge of \$1.00 on all enplaning passengers of commercial airlines at Dress Memorial Airport, whether said enplaning passengers travel in intra- or inter-state commerce.

10. The Terminal Building at Dress Memorial Air-

port is primarily designed for use by persons traveling on commercial airlines.

11. Most of the facilities constituting the Terminal Building at Dress Memorial Airport would not be essential for the operation of a noncommercial airport except for the required use thereof by persons traveling on commercial airlines.

12. The runway lengths, approach areas, taxiways and ramp areas of said Dress Memorial Airport would not be so extensive except for the requirement that the same be sufficiently extensive in order to accommodate commercial airline carriers and their passengers.

13. The present existing runway lengths at Dress Memorial Airport are as follows:

Northeast-Southwest Runway — 8023 ft;

North-South Runway — 5084 ft;

East-West Runway — 3502 ft;

Each of the foregoing runways is 150 feet in width.

14. Runway length requirements for private, non-commercial aircraft using Dress Memorial Airport or other airports similarly located and situated are as follows: a runway length of 3500 to 4000 feet would be required, and, while most noncommercial airports throughout the country have only one runway, it is desirable that there be constructed two runways of the same length, to-wit: 3500 to 4000 feet, which would constitute cross-wind runways. Required construction for said runways would be a grass or other stabilized surface such as blacktop of approximately 3 inches in depth. The required width of said runways would not exceed 50 to 75 feet. The cost of constructing said runways for private, noncommercial aircraft (aircraft weighing less than 12,500 lbs.) would be approximately \$25.00 per lineal foot, exclusive of actual ground costs.

15. Present construction requirements established by the Federal Aviation Administration dictate that runways for use by commercial aircraft shall be of reinforced concrete, 12 inches in depth and not less than 150 feet in width. Present construction costs for such runways to serve commercial aircraft approximate \$200.00 per lineal foot, exclusive of actual ground costs.

16. The present real estate owned by the defendant, Evansville-Vanderburgh Airport Authority District, at the Dress Memorial Airport consists of 1330 acres, whereas only approximately 200 to 300 acres of real estate would be required in order to maintain an airport for use by private, noncommercial aircraft (aircraft weighing less than 12,500 lbs.).

17. Dress Memorial Airport operates and maintains an instrument lighting system and an approach lighting system for use by commercial airlines, both of which are costly to maintain and operate and would not be necessary in connection with use by private, noncommercial aircraft.

18. All persons operating private civil aircraft at Dress Memorial Airport pay a fuel flowage fee of five cents (5¢) per each gallon of gas purchased at Dress Memorial Airport, which fee is collected by the Fixed Base Operators at said Airport and remitted to the defendant, Evansville-Vanderburgh Airport Authority District. During the year 1967, the defendant, Evansville-Vanderburgh Airport Authority District, derived the sum of \$47,862.77 from the imposition of said fuel flowage fee which was collected and paid by the Fixed Base Operators located at Dress Memorial Airport.

19. The defendant, Evansville-Vanderburgh Airport Authority District, is entitled to receive for each

dollar of food commodity and non-alcoholic beverage sales at the dining room located in the Dress Memorial Airport Terminal Building the sum of  $7\frac{1}{2}$ ¢, which sum is additional rental and is paid from the gross receipts by the lessee of said restaurant, Indiana Caterers, Inc. With respect to the sale of alcoholic beverages, the defendant, Evansville-Vanderburgh Airport Authority District, is entitled to receive for each dollar of sales of alcoholic beverages the sum of  $12\frac{1}{2}$ ¢, which sum is additional rental and is paid from the gross receipts to the defendant by said lessee. During the year 1968, the lessee of the Airport Terminal Building restaurant, Indiana Caterers, Inc., paid to the defendant, Evansville-Vanderburgh Airport Authority District, as additional rental, the sum of \$22,674.51.

20. Ten cents (10¢) of each dollar derived from the rental of automobiles to persons at the Dress Memorial Airport is paid to the Evansville-Vanderburgh Airport Authority District as additional rental from gross receipts by the lessees who operate the Avis and National Car Rental franchises at said Airport (the Hertz Car Rental franchise pays 8.5% of gross receipts under its original and earlier contract which has not yet expired). During the year 1967, Avis Rent-a-Car paid to the defendant, Evansville-Vanderburgh Airport Authority District, the sum of \$24,981.07, and Hertz Rent-A-Car paid the sum of \$26,201.33 to the defendant, Evansville-Vanderburgh Airport Authority District. (National Car Rental did not commence its lease until 1969.)

21. All persons using the parking facilities located at Dress Memorial Airport are required to pay in accordance with established rates approved by the defendant, Evansville-Vanderburgh Airport Authority

District, and, the defendant, Evansville-Vanderburgh Airport Authority District, is entitled to receive as additional rental the following percentages of all gross sums derived from such parking charges:

20.4% of all gross receipts for the first \$25,000.00;

25% of that portion of gross annual receipts in excess of \$25,000.00 but not in excess of \$50,000.00 per annum;

75% of that portion of gross annual receipts in excess of \$50,000.00 but not in excess of \$100,000.00 per annum;

80% of that portion of gross annual receipts in excess of \$100,000.00 per annum.

During the year 1968, the lessee of the parking lot paid to the defendant, Evansville-Vanderburgh Airport Authority District, the sum of \$19,767.51.

22. In order to help defray capital improvement costs at Dress Memorial Airport, as set out in the budgets of the defendant, Evansville-Vanderburgh Airport Authority District, for the years 1965 through 1968, there exists a Cumulative Building Fund Levy which was established by said defendant and approved by the Indiana State Board of Tax Commissioners, which Cumulative Building Fund Levy has provided a total of approximately \$400,000.00 which has been used in connection with the purchase of real estate and the defrayment of certain capital improvement costs at the Dress Memorial Airport. The Cumulative Building Fund Levy is not reflected in and is in addition to the yearly tax levies of the defendant, Evansville-Vanderburgh Airport Authority District, required to be made in order to pay bond retirement costs as more parti-

cularly set forth in Defendants' Submitted Facts 23, 24, 25 and 26.

23. For the year 1965, principal and interest payments on outstanding bonded indebtedness of the defendant, Evansville-Vanderburgh Airport Authority District, for capital improvements at Dress Memorial Airport, were in the sum of \$166,059.00. During the year 1965, the operating budget and expenses and debt retirement costs of the defendant, Evansville-Vanderburgh Airport Authority District, were in the total sum of \$332,976.80, and the revenues of said defendant for the same year, derived from all sources, exclusive of tax revenues, were in the sum of \$176,653.10. The revenues of Dress Memorial Airport were only sufficient to satisfy \$9,735.30 of said bond retirement costs of \$166,059.00.

24. For the year 1966, principal and interest payments on outstanding bonded indebtedness of the defendant, Evansville-Vanderburgh Airport Authority District, for capital improvements at Dress Memorial Airport, were in the sum of \$184,462.04. During the year 1966, the operating budget and expenses and debt retirements costs of the defendant, Evansville-Vanderburgh Airport Authority District, were in the total sum of \$344,326.64, and the revenues of said defendant for the same year, derived from all sources, exclusive of tax revenues, were in the sum of \$223,318.35. The revenues of Dress Memorial Airport were only sufficient to satisfy \$63,453.75 of said bonded retirement costs of \$184,462.04.

25. For the year 1967, principal and interest payments on outstanding bonded indebtedness of the defendant, Evansville-Vanderburgh Airport Authority District, for capital improvements at Dress Memorial

Airport, were in the sum of \$182,164.54. During the year 1967, the operating budget and expenses and debt retirement costs of the defendant, Evansville-Vanderburgh Airport Authority District, were in the total sum of \$363,431.21, and the revenues of said defendant for the same year, derived from all sources, exclusive of tax revenues, were in the sum of \$268,970.33. The revenues of Dress Memorial Airport were only sufficient to satisfy \$87,703.66 of said bond retirement costs of \$182,164.54.

26. For the year 1968, principal and interest payments on outstanding bonded indebtedness of the defendant, Evansville-Vanderburgh Airport Authority District, for capital improvements at Dress Memorial Airport, were in the sum of \$178,867.04. During the year 1968, the operating budget and expenses and debt retirement costs of the defendant, Evansville-Vanderburgh Airport Authority District, were in the total sum of \$400,846.71, and the revenues of said defendant for the same year, derived from all sources, exclusive of tax revenues, were in the sum of \$287,582.03. The revenues of Dress Memorial Airport, therefore, were only sufficient to satisfy \$65,602.36 of said bond retirement costs of \$178,867.04.

27. Approximately forty percent (40%) of the users of the Dress Memorial Airport are non-residents of Vanderburgh County, Indiana, and do not own property in said county. The funds which are needed, over and above operating revenues, to retire existing and future capital improvement costs at Dress Memorial Airport, prior to the enactment of Ordinance No. 33 establishing a use and service charge, are derived from tax levies on all assessed property located within Vanderburgh County, Indiana. The use and service charge

established by said Ordinance is designed to be collected from all commercial airline enplaning passengers who use Dress Memorial Airport, without regard to their residence or ownership of property within Vanderburgh County, Indiana.

28. During the years 1965 through 1968, the plaintiffs paid to the defendant, Evansville-Vanderburgh Airport Authority District, the following sums for fuel use payments:

	Delta	Eastern	Lake Central (Allegheny)
1965	\$ 8,649.12	\$12,149.40	\$3,705.38
1966	18,971.82	12,658.92	5,508.31
1967	18,658.85	25,895.72	4,955.33
1968	18,767.98	20,208.18	4,245.11

29. Based upon the present bonded indebtedness of the defendant, Evansville-Vanderburgh Airport Authority District, and the need for additional capital improvements at Dress Memorial Airport, as shown by the exhibits attached hereto and these stipulations, there exists a need for additional revenue. Ordinance No. 33 of the defendant, Evansville-Vanderburgh Airport Authority District, was designed to raise this additional revenue.

30. Set forth in "Exhibit C" attached hereto and made a part hereof, is a list of thirty-five (35) states which, by legislation, have imposed fuel and highway use taxes on commercial and common carriers using the highways of the various states listed. In most states, said fuel and use taxes are based upon the number of miles traveled by the carrier within the respective states, which mileage is divided by an average of five (5) miles per gallon and the result of which is then multiplied by the tax rate per gallon established by

each state. If the carrier cannot show proof of payments of the amount of fuel and use tax imposed, through purchases made in the state imposing the fuel and use tax, then such carrier is required to pay any deficiency by reports which are required to be filed by such states at regular intervals during the year.

As noted by "Exhibit C" attached, some states, in addition to highway fuel and use taxes, impose taxes based upon gross receipts (Arizona, California and Montana), gross weight (Colorado, Idaho).

In addition to those states listed in "Exhibit C," the State of Ohio also has a highway use tax of 1¢ to 2.5¢ per mile traveled within said state based upon the number of axles of the tractor-trailer unit using the highways. In the State of New York, highway use tax for certain commercial carriers is imposed at the rate of approximately 3¢ per mile, which sum is payable over and above the state fuel tax which is imposed in that state.

In those thirteen (13) states checked, single and two axle units are exempt from the payment of the highway fuel and use taxes imposed, except if fuel is actually purchased within those states.

31. That the vast majority of persons enplaning aircraft at Dress Memorial Airport are either initiating the first leg of a journey which will be completed by a return flight to Evansville or, conversely, are completing the second leg of a journey which had its origin at a locality other than Evansville.

32. Attached hereto, made a part hereof and identified as "Exhibit D," is a preliminary construction costs estimate of developments required and recommended by the consultants of the defendant, Evansville-Van-

derburgh Airport Authority District, Ralph H. Burke, Inc. of Park Ridge, Illinois, which report recommends the construction of a new terminal building and sufficient concrete aprons for nine gate positions to accommodate commercial airline aircraft, in addition to the construction of access roads and parking areas, extension of the northeast-southwest runway, land acquisition and the construction of a new cross-wind runway. The total estimated cost of said items to the Evansville-Vanderburgh Airport Authority District, after deductions of expected Federal participating funds is in the sum of \$6,901,000.00.

33. The capital improvement program recommended by the consultants of Evansville-Vanderburgh Airport Authority District, as summarized on "Exhibit D" attached, together with the terminal building improvement program which has, in fact, been adopted recently by the Board of Evansville-Vanderburgh Airport Authority District, as set forth in "Exhibit A" attached, is designed primarily for the safety, comfort and convenience of commercial airlines, its equipment, personnel and commercial airline passengers.

34. The adoption, initiation and fulfillment of the capital improvements recommended by the consultants of Evansville-Vanderburgh Airport Authority District and the retirement of the indebtedness created thereby will require more additional revenues than would be produced by Ordinance No. 33, assuming that said improvements are amortized over a fifteen (15) year period and that the forecast of probable passenger movement at Dress Memorial Airport is reasonably accurate.

35. The adoption, initiation and fulfillment of the capital improvements recommended by the consultants

of Evansville-Vanderburgh Airport Authority District will require more revenue than can be produced by the maximum tax levy now permitted by law to be levied by the Evansville-Vanderburgh Airport Authority District Act and will necessarily require additional revenues in excess of those which would be produced by Ordinance No. 33 in order to amortize the costs thereof. This paragraph of stipulation is based upon the present assessed valuation of property in Vanderburgh County and a schedule of amortization computed in a like manner to that set forth in Defendants' Submitted Facts No. 7

36. Ordinance No. 33 was adopted by the Board of Evansville-Vanderburgh Airport Authority District in accordance with the legal procedures required by Indiana law.

37. Commercial airline passengers, together with those persons who accompany or greet said passengers when they enplane or deplane at Dress Memorial Airport, constitute, numerically, the majority of persons who frequent the terminal and related facilities at Dress Memorial Airport. This paragraph of the stipulation is not intended to encompass or include the frequency of use of Dress Memorial Airport facilities nor the specific facilities actually used by persons frequenting Dress Memorial Airport.

38. If an enplaning air passenger refuses to pay the federal taxes imposed upon commercial airline ticket sales, the plaintiff airlines have two alternatives. One alternative is to enplane the passenger and pay the charge themselves, assuming the passenger has paid the air travel charges. The second alternative is to refuse to enplane the passenger.

s / Fred P. Bamberger  
Fred P. Bamberger  
s / Jeffrey R. Kinney  
Jeffrey R. Kinney  
s / John K. Mallory, Jr.  
John K. Mallory, Jr.  
s / Daniel B. Silver  
Daniel B. Silver

OF COUNSEL:

BAMBERGER, FOREMAN,  
OSWALD AND HAHN  
708 Hulman Building  
Evansville, Indiana 47708

Robert C. Barnard  
John K. Mallory, Jr.  
CLEARY, GOTTLIEB, STEEN  
AND HAMILTON  
1250 Connective Avenue, N.W.  
Washington, D.C. 20036  
*Attorneys for Plaintiffs*

s / Howard P. Trockman  
Howard P. Trockman

OF COUNSEL:  
NEWMAN, TROCKMAN & FLYNN  
20 N.W. Sixth Street  
Evansville, Ind. 47708  
*Attorney for Defendants*

**EXHIBIT 4 TO PARTIES' STIPULATION  
OF FACTS SUBMITTED TO VANDERBURGH  
SUPERIOR COURT.**

**(R. 553)**

(Exhibits 1, 2 and 3 to the Parties' Stipulation have been omitted in printing. These exhibits are leases between the Respondent Airlines and the Petitioner Airport Authority. Exhibit 5 has been omitted in printing. It is a summary of general fund revenues of the Petitioner Airport Authority for the year 1967.)

**EVANSVILLE-VANDERBURGH AIRPORT  
AUTHORITY DISTRICT  
ORDINANCE NO. 33**

**AN ORDINANCE ESTABLISHING AND FIXING  
A USE AND SERVICE CHARGE FOR ALL EN-  
PLANING PASSENGERS UTILIZING AIRPORT  
PREMISES AND FACILITIES.**

WHEREAS, the Acts of the Indiana General Assembly, 1969, Chapter 15, Section 30, provides that the acquiring, establishment, construction, improvements, equipment and maintenance and the control and operation of Airports and landing fields for aircraft under and pursuant to the Act creating the Evansville-Vanderburgh Airport Authority District, shall and are hereby declared to be a governmental function of general public necessity and benefit, and shall be for the use and general welfare of all of the people of the State of Indiana, as well as all of the people residing in the District of said Board, the same being coterminous with the boundaries of Vanderburgh County, Indiana; and

WHEREAS, the Evansville-Vanderburgh Airport Authority District was duly created under and pursuant to the terms and provisions of the Acts of the Indiana General Assembly, 1959, Chapter 15, and upon its creation and establishment, said Airport Authority District assumed the responsibility for the care, construction, improvement, equipment, maintenance and control of the Dress Memorial Airport located in Evansville, Vanderburgh County, Indiana; and

WHEREAS, the Board of Evansville-Vanderburgh Airport Authority District is empowered, pursuant to said Acts of the Indiana General Assembly, to enact

ordinances for the purpose of adopting a schedule of rates and charges and to collect the same from all users of facilities and services provided by said Dress Memorial Airport; and

WHEREAS, the Evansville-Vanderburgh Airport Authority District, pursuant to said Acts of the Indiana General Assembly, has the further power to fix, charge and collect rentals, tolls, fees and charges to be paid for the use of the whole or any part or parts of said Dress Memorial Airport and to fix, charge and collect fees for public admissions and privileges; and

WHEREAS, the Board of Evansville-Vanderburgh Airport Authority District has determined, upon investigation, that the use of said Airport and its various facilities is enjoyed by persons and taxpayers not only residing in Vanderburgh County, Indiana, but by numerous persons residing outside the jurisdiction of said District who do not directly contribute toward the support, construction, improvement, equipment, maintenance and control of said Airport and its facilities; and

WHEREAS, the Board of said Airport Authority District has determined that there exists a need for additional revenue with which to defray the continued and future costs of construction, improvement, equipment and maintenance of said Airport so as to provide for the reasonable safety, convenience and comfort of enplaning passengers using the facilities of Dress Memorial Airport; and

WHEREAS, the Board of said Evansville-Vanderburgh Airport Authority District, after due and deliberate consideration, has determined that the responsibility for the support, construction, improvement,

equipment and maintenance of said Airport and its facilities, lies and should be shared more equally by all those persons who enjoy and use its facilities and services;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Evansville-Vanderburgh Airport Authority District as follows:

**Section 1.** Commencing on July 1, 1968, there is hereby fixed, created and established a use and service charge of One Dollar (\$1.00) for each passenger enplaning any commercial aircraft operated from the Dress Memorial Airport.

**Section 2.** Each commercial airline now or hereafter operating commercial aircraft to and from the Dress Memorial Airport is hereby charged, together with its various agents and travel agencies, servants, employees and representatives, with the responsibility of collecting said use and service charge.

**Section 3.** Said commercial airlines are hereby further directed to remit to Evansville-Vanderburgh Airport Authority District all the use and service charges so collected:

- (a) for the period commencing July 1 and terminating December 31 of each year, on or before January 31 next following said six month period;
- (b) for the period commencing January 31 and terminating June 30 of each year, on or before July 31 next following said six month period.

Said remittances shall be based upon the number of enplaning passengers at Dress Memorial Airport as hereinabove described in Section 2 of this Ordinance, times the use and service charge of One Dollar (\$1.00),

less six percent (6%) of all amounts so collected, which percentage is hereby allocated and allowed to said airlines for the purpose of defraying the administrative costs of collecting and remitting said use and service charge.

**Section 4.** The term "each passenger enplaning any commercial aircraft operated from the Dress Memorial Airport" shall not include, nor shall the use and service charge hereby created, apply to any active members of the United States Armed Forces enplaning aircraft at the Dress Memorial Airport, or any person purchasing an airline ticket having, as an initial point of departure, a locality other than Dress Memorial Airport, and whose flight either terminates or requires an intermediate or temporary stop at Dress Memorial Airport.

**Section 5.** All revenue collected from said use and service charges shall be held by the Evansville-Vanderburgh Airport Authority District in a separate fund for the purpose of defraying the present and future costs incurred by said Airport Authority in the construction, improvement, equipment, and maintenance of said Airport and its facilities for the continued use and future enjoyment by all users thereof.

**Section 6.** If any provision or clause of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**Section 7.** This Ordinance shall be in full force and effect upon its passage and approval by the Board of Evansville-Vanderburgh Airport Authority District

as provided by law, and shall remain in full force and effect until amended, modified or revoked by the Board of said District.

PASSED by the Board of Evansville-Vanderburgh Airport Authority District on this 26th day of February, 1968, and on said day signed by the President and attested by the Secretary of Evansville-Vanderburgh Airport Authority District.

 s / Kenneth C. Kent

Kenneth C. Kent, President

ATTEST:

s / Robert M. Leich

Robert M. Leich, Secretary

**EXHIBIT A TO PARTIES' STIPULATION OF  
FACTS SUBMITTED TO VANDERBURGH,  
SUPERIOR COURT.**

**(R. 558)**

**EVANSVILLE (DRESS MEMORIAL AIRPORT)  
PRELIMINARY COST ESTIMATE FOR  
CONSTRUCTION AT TERMINAL BUILDING  
BY STAGES**

Stage I Addition	S. F.	Unit Price	Amount
Baggage Claim Area (3 car rental areas, 80 feet baggage counters, lockers, and additional toilets for baggage claim area)	6,900	\$25.00	\$172,500.00
New Canopy	1,500	6.00	9,000.00
Sidewalks & Fences		L. S.	10,000.00
			\$191,500.00
Contingency & Engineering @ 20%			38,300.00
Subtotal Construction Cost			<hr/> 229,800.00

**(Baggage Stage I)**

Road and Parking Lot Changes from Existing Construction			
Drawings			200,000.00
Remodeling Items			
(New Curtain wall and entrance)	1,500	40.00	60,000.00
Contingency & Engineering @ 20%			12,000.00
New Space for Allegheny	1,100	25.00	27,500.00
Contingency & Engineering @ 20%			5,500.00
Subtotal			<hr/> \$305,000.00
Subtotal Stage I			\$534,800.00

**Stage II Addition**

Airline Space (includes space for addi- tional airline operating space, enlarged ticket lobby, entrance, and	11,200	25.00	\$280,000.00
--	--------	-------	--------------

insurance areas)		
Sidewalks & Fences	L. S.	10,000.00
		<hr/>
Contingency & Engineering @ 20%		\$290,000.00
		58,000.00
Subtotal Construction Cost (Stage II)		\$348,000.00

December 5, 1968

**PRELIMINARY COST ESTIMATE FOR  
CONSTRUCTION AT TERMINAL BUILDING  
BY STAGES**

Stage III Addition & Remodel	S.F.	Unit Price	Amount
New Waiting Room Area	1,800	\$25.00	\$ 45,000.00
Sidewalks & Fences		L. S.	10,000.00
			<hr/>
Contingency & Engineering @ 20%			\$ 55,000.00
			11,000.00
Sub-Total Construction Costs (Stage III)			\$ 66,000.00
Grand Total Construction Costs (Three Stages)			\$948,800.00
<b>Stage IV Additions (Future)</b>			
Future Canopy Area			
Future Sidewalks & Fences	6,300		
Enlarge Snack Shop Area	350		

(The full Exhibit A to the Parties' Stipulation has been omitted in printing. The foregoing is the Summary portion of that Exhibit A.)

**SUMMARY OF EXHIBIT B TO PARTIES'  
STIPULATION OF FACTS SUBMITTED  
TO VANDERBURGH SUPERIOR COURT.**

**(R. 566)**

## I. AIRPORT HISTORY—1929 TO DATE

- Since Dress Memorial Airport was opened in 1929, it has grown from 278 acres to 568 acres.
- \$6,650,668 have been invested in the public-owned assets at the Airport. Of the total investment, \$2,946,381 came from local sources and \$3,704,287 came from Federal grants.
- The Airport is a vital economic force in the community giving employment to 273 people in 19 separate businesses and government agencies with an annual payroll of \$1,177,786.
- The Airport today increasingly pays its own way in its annual operating budget. In 1961, the Airport Authority received an income of \$145,005 from Airport business tenants.

## II. AIR TRAFFIC PROJECTIONS

- Population of the Evansville Primary Air Trade Area will increase from 199,313 in 1960 to 232,500 in 1970.
- Annual passenger volume will increase from 145,000 (both enplaned and deplaned) in 1960 to 268,000 by 1970, an increase of 85%.
- Air mail volume will increase by 45% and air cargo by 345%.
- Jet aircraft, the Caravelle and the Boeing 727, will start using the Airport by 1965 or 1966.
- The Northeast/Southwest runway, the Airport's principal runway, will have to be extended to a minimum effective length of 6,600 feet by 1966.

## III. AIRPORT FACILITIES TODAY

- The existing physical facilities at the Airport

today are in excellent condition, particularly as a result of the major rehabilitation program undertaken in 1955.

—The needs of today are being adequately served by the existing airport runways and facilities although approaches to all runways are currently obstructed in varying degrees.

#### **IV. FUNDAMENTAL DEFICIENCIES OF AIRPORT**

The greatest deficiency of Dress Memorial Airport is the runway approach condition. Approaches to all runways are currently obstructed in varying degrees by railroad, highway, trees, or power lines.

##### **—Northeast/Southwest Runway**

The Northeast approach to the runway which is the Airport's principal runway as well as the instrument landing runway is obstructed by a railroad and three highway right-of-ways.

Because of these obstructions, airplanes on instrument landings have to operate on a 34:1 glide angle which is considerably below the Federal Aviation Agency's specifications of a 50:1 glide angle.

In order to clear all obstructions, airplanes on instrument landings have to land 600 feet "in" from the end of the runway. This causes the effective length of the runway to be reduced to 5,427 feet instead of its actual 6,027 feet.

This runway is short of the effective length of 6,600 feet required for jet air traffic.

Necessary corrective measures include the purchase of additional land, the re-routing of several roads and the re-location of the New York Central Railroad tracks somewhat to the east of the airport; in addition, an extension of the runway is necessary to meet jet requirements.

**—North/South Runway**

While the North/South runway has approach obstruction shortcomings, these unsatisfactory conditions are not critical based upon future plans for the use of this runway.

**—East/West Runway**

While the East/West runway has obstruction shortcomings now, they are not serious and will be remedied under future plans for this runway set forth in a subsequent section of this report.

**—Air Terminal Building**

While the airport terminal building satisfactorily meets the requirements of today, it is essential that expansion plans be formulated now to meet the requirements of 1970 and beyond.

**—Automobile Traffic Flow**

The present automobile entrance and exit are unsatisfactory as well as is the traffic flow. These conditions need to be remedied in the airport's future development program.

**V. PROS AND CONS OF NEW AIRPORT SITE**

—The development of an entirely new airport for the expanding "jet age" requirements at a site in the eastern part of the county on the

Vanderburgh-Warrick County Line would be an ideal solution.

- The cost of an entirely new airport, however, would be \$13,000,000 to \$16,000,000.
- Even with Federal grants of \$5,000,000 to \$7,000,000, the remaining funds to be financed locally are beyond the bonding capacity of the community.
- It is clear, therefore, that the only prudent move for the community is to correct existing deficiencies and expand the physical facilities of Dress Memorial Airport to meet the requirements of the future.

## VI. PLANS FOR FUTURE UTILIZATION OF AIRPORT LAND

- Further hangar development for both commercial and private operators in the future will be allocated to the northwest corner of the Airport property.
- Tee-hangars and outside storage of aircraft will be allocated to the area around the Modification Center.
- Since Evansville Aviation Corporation's hangar is too close to the East/West runway by Federal standards, it will have to be relocated when the East/West runway is expanded.
- Land is allocated for motel development.
- Areas along the eastern border of expanded Airport property could be utilized for industrial sites.

## VII. RECOMMENDED DEVELOPMENT PROGRAM FOR 1962-1971

- A development program costing \$4,481,000 over the next nine years is recommended to provide the community with a modern airport designed to meet near- and medium-term jet-age requirements as well as overcome serious operational obstruction shortcomings to runway approaches that now exist.
- The recommended \$4,481,000 development program costs considerably less than the \$13,000,000 to \$16,000,000 that would be required for the development of an entirely new airport site. Furthermore, this program is also considerably less costly than the \$9,427,000 program recommended by Leigh Fisher Associates, Inc. in a report submitted in February, 1962.
- The \$4,481,000 development program is programmed into three stages to meet financial limitations of the community.
- The key feature of the program is the acquisition of 370 acres to the east and northeast of the Airport for railroad relocation and runway expansion. It is indicated that the present New York Central Railroad trackage bordering existing airport property be moved east to the newly acquired 370 acres.
- The main Northeast/Southwest runway will be extended to the northeast by approximately 2,000 feet to a total length of 8,000 feet. This will provide for an effective runway length of 6,600 feet for instrument landings from the southwest. It will also provide for

- the full 8,000 feet to be used on take-offs to the northeast and landings to the southwest.
- Because of the obstructions of the Whirlpool Plant to the south and the McCutchanville hills to the north, use of the North/South runway will be discontinued in 1969. It will continue, however, to be useful as a taxiway.
- The East/West runway will become the secondary runway of the Airport and will be extended by 2,170 feet to an over-all length of 5,670 feet as well as being widened to 150 feet from its present width of 100 feet.
- The Terminal Building expansion to meet future requirements is planned in three stages over the next nine-year period. It will be financed from the Airport Authority's existing Cumulative Building Fund.
- A new entrance-exit driveway into the terminal facilities from Highway 41 will be provided.

### **VIII. TIMETABLE FOR ACCOMPLISHMENT OF EACH DEVELOPMENT PHASE AND ESTIMATED COSTS**

- The \$4,481,000 Airport development program is scheduled over the next nine-year period in three phases, 1962 through 1971.
- Phase I of the Airport development program is scheduled for accomplishment during 1962-1966 at a total estimated cost of \$2,620,000 as follows:
  - a) Acquisition of 370 acres of adjacent land, \$740,000.

- b) New York Central Railroad relocation, \$268,000.
- c) Road and highway relocation, \$217,000.
- d) Extending the Northeast/Southwest runway to meet specifications of the Federal Aviation Agency, \$1,030,000.
- e) First stage of Terminal Building expansion, \$165,000.
- f) Construction of Maintenance Building-Crash-Fire Station, \$100,000.
- g) Entrance road revision, \$100,000.

—Phase II of the Airport development program is scheduled for accomplishment during 1967-1969 at a total estimated cost of \$1,337,000 as follows:

- a) Acquisition of 10 acres of land, \$200,000.
- b) Extension of East/West runway into Airport's secondary runway, \$854,000.
- c) Second stage of Terminal Building expansion, \$213,000.
- d) Relocation of hangars, \$70,000.

—Phase III of the Airport development program is scheduled for accomplishment during 1970-1971 at a total estimated cost of \$524,000 as follows:

- a) Third stage of Terminal Building expansion, \$194,000.
- b) Enlargement of aircraft ramp areas, \$330,000.

## IX. FINANCIAL PROGRAMMING FOR DRESS MEMORIAL AIRPORT DEVELOPMENT

—The source of funds for the \$4,481,000 Air-

port development program are provided for as follows:

- a) \$338,000 from the ninth Federal Aid Project now in existence.
- b) \$572,000 for the Terminal Building expansion will come from the existing Cumulative Building Fund of the Airport Authority over the next nine-year period.
- c) Three local bond issues in the total amount of \$1,735,000 will be sold over the next nine-year period as follows: \$1,058,000 in 1963; \$562,000 in 1968; \$165,000 in either 1971 or 1972.
- d) Over the next nine-year period, Federal grants of \$1,785,000 will be received.

**EXHIBIT C TO PARTIES' STIPULATION OF  
FACTS SUBMITTED TO VANDERBURGH  
SUPERIOR COURT.**

**(R. 636)**

## FUEL TAXES

State	Type	Fuel	Tax Rate Per Gallon	Method of Collection
Alabama		Gasoline	.07	At time purchase-deficiency paid by report.
Alabama		Diesel	.07	At time purchase-deficiency paid by report.
Arizona		Diesel	.07	By report — no tax charged at time of purchase. However, if diesel unit does not have a permit, the port of entry will collect tax at $1\frac{3}{4}$ cent per mile.
California		Diesel	.07	At time of purchase-deficiency by report.
Colorado		Diesel	.06	By report — no tax charged at time of purchase. However, if diesel unit does not have a permit, the port of entry will collect tax using 4 MPG average.
Connecticut		Gasoline	.07	At time of purchase-deficiency by report.
Connecticut		Diesel	.07	At time of purchase-deficiency by report.
Georgia		Gasoline	.065	At time of purchase-deficiency by report.
Georgia		Diesel	.065	At time of purchase-deficiency by report.
*Iowa		Gasoline	.07	At time of purchase-deficiency by report.

State	Type Fuel	Tax Rate Per Gallon	Method of Collection
*Iowa	Diesel	.08	At time of purchase-deficiency by report.
Kansas	Gasoline	.05	At time of purchase-deficiency by report.
Kansas	Diesel	.07	At time of purchase-deficiency by report.
Kentucky	Gasoline	.09	.07 at time of purchase-deficiency by report plus surtax of .02 per gallon by report.
Kentucky	Diesel	.09	At time of purchase-deficiency by report.
Maine	Gasoline	.07	At time of purchase-deficiency by report.
Maine	Diesel	.07	At time of purchase-deficiency by report.
Maryland	Gasoline	.07	At time of purchase-deficiency by report.
Maryland	Diesel	.07	At time of purchase-deficiency by report.
Minnesota	Gasoline	.07	At time of purchase-deficiency by report.
Minnesota	Diesel	.07	At time of purchase-deficiency by report.
Missouri	Gasoline	.05	At time of purchase-deficiency by report.
Missouri	Diesel	.05	At time of purchase-deficiency by report.
Montana	Gasoline	.065	At time of purchase-deficiency by report.
Montana	Diesel	.09	At time of purchase-deficiency by report.

State	Type	Fuel	Tax Rate Per Gallon	Method of Collection
* Nebraska		Gasoline	.075	At time of purchase-deficiency by report.
* Nebraska		Diesel	.075	At time of purchase-deficiency by report.
Nevada		Diesel	.06	By report - no tax charged at time of purchase. However, a diesel unit that does not have permit may have to pay tax at port of entry.
New Hampshire		Gasoline	.07	At time of purchase-deficiency by report.
New Hampshire		Diesel	.07	By report - no tax charged at time of purchase. However, a diesel unit that does not have a permit can operate on a 5.00 trip wire which covers tax liability.
* New Jersey		Gasoline	.06	At time of purchase-deficiency by report.
* New Jersey		Diesel	.06	At time of purchase-deficiency by report.
New Mexico		Diesel	.07	By report - no tax charged at time of purchase. However, if diesel unit does not have permit, the port of entry will collect tax on

State	Type Fuel	Tax Rate Per Gallon	Method of Collection
*North Carolina	Gasoline	.07	fuel in tanks and vehicle may be required to pay tax at time of purchase.
*North Carolina	Diesel	.07	At time of purchase-deficiency by report.
North Dakota	Gasoline	.06	At time of purchase-deficiency by report.
North Dakota	Diesel	.06	At time of purchase-deficiency by report.
Oklahoma	Gasoline	.0658	At time of purchase-deficiency by report.
Oklahoma	Diesel	.065	At time of purchase-deficiency by report.
*Pennsylvania	Gasoline	.07	At time of purchase-deficiency by report.
*Pennsylvania	Diesel	.07	At time of purchase-deficiency by report.
South Carolina	Gasoline	.07	At time of purchase-deficiency by report.
South Carolina	Diesel	.07	At time of purchase-deficiency by report.
South Dakota	Gasoline	.06	At time of purchase-deficiency by report.
South Dakota	Diesel	.07	At time of purchase-deficiency by report.
*Tennessee	Gasoline	.07	At time of purchase-deficiency by report.

State	Type	Fuel	Tax Rate Per Gallon	Method of Collection
*Tennessee	Diesel		.08	At time of purchase-deficiency by report.
Texas		Gasoline	.05	At time of purchase-deficiency by report.
Texas		Diesel	.065	At time of purchase-deficiency by report.
Utah		Diesel	.06	At time of purchase. However, if a diesel unit does not have a permit, the tax will be collected at port of entry on fuel in tanks.
Virginia		Gasoline	.09	.07 at time of purchase-deficiency by report plus .02 gallon by report.
Virginia		Diesel	.09	.07 at time of purchase-deficiency by report plus .02 gallon by report.
Washington		Diesel	.09	By report - no tax charged at time of purchase. However, a diesel unit that does not have a permit will be required to purchase a \$20.00 trip permit. A portion of the 20.00 is refundable if the driver turns in pink copy with logs.

State	Type	Fuel	Tax Rate Per Gallon	Method of Collection
West Virginia	Gasoline		.07	At time of purchase-deficiency by report.
West Virginia	Diesel		.07	At time of purchase-deficiency by report.
Wyoming	Diesel		.07	By report - no tax charged at time of purchase. However, a diesel unit that does not have a permit will be assessed tax at port of entry.

## MILEAGE AND MISCELLANEOUS TAXES

State	Type	Tax Rate	Method of Collection
Arizona	Gross Receipts	2.5%	By report — However, a vehicle not having proper permit may be assessed \$7.50 flat rate fee at port of entry.

**Basis of Computations:** Based on percent of revenues earned in state. Example: A \$900.00 shipment from Los Angeles, California, to Evansville, Indiana — total 2,029 miles. Percent of miles operated in Arizona — 18.5%. Apply 18.5% to \$900.00 gross revenue = \$166.50 net taxable revenue. Apply 2.5% tax rate to net taxable revenue — \$4.16 tax due. (Atlas reports on shipment basis. All shipments identified by registration numbers. We cannot identify by unit number.)

California	Inter-state Gross Receipts	1.5% By report. Tax computed same as Arizona using 1.5% tax rate (shipment basis).
California	Intra-state Gross Receipts	By report. $\frac{1}{4}$ of 1% of gross intrastate revenue (shipment basis).
Colorado	Ton Mile Tax	By report — X number of mills for each ton of cargo hauled each mile plus X number of mills per mile of unladen vehicle weight.

**Example of Colorado ton mile tax computation:** Cargo weight 21,000 pounds times 400 miles = 840,00 pound miles divided by 2,000 (1 ton) = 42,200 ton miles times 2 mills = \$8.40 cargo tax. Unladen vehicle weight 28,513 pounds = 14.25 tons times 8/10 of 1 mill = .0114 cost per mile times 400 miles = \$4.56 vehicle tax due. Total ton mile tax \$12.96.

Georgia	Highway Use Tax	By report — \$10.00 per round trip assessed as retaliatory tax against vehicles licensed in non-reciprocal states who assess a similar fee against Georgia licensed vehicles.
---------	--------------------	---

Idaho	Fuel & Mileage Tax	X number of mills per mile for fuel and mileage tax depending on
-------	-----------------------	--

registered gross weight of vehicle.

**Example:** A diesel powered vehicle registered at 60,000 pounds pays 23.80 mills per mile mileage tax and 10.60 mills per mile fuel tax. 414 miles = \$14.25 tax due. A gasoline powered unit pays 23.80 mills per mile only. 414 miles = \$9.85 plus the gasoline vehicle must purchase fuel in state to equal miles traveled. Tax rate is .06 per gallon.

Montana	Gross Receipt Tax	By report — $\frac{1}{2}$ of 1% of gross revenue earned in state. Computed same as Arizona gross receipt tax using $\frac{1}{2}$ of 1% tax rate (shipment basis)...
Nevada	Mileage Tax	By report — .025 per mile.

**Example:** 417 miles = \$10.43 tax due. Vehicle not having mileage tax plate will be required to purchase \$30.00 trip permit. It is possible in some cases to obtain refund on trip permit.

Oregon	Fuel & Mileage Tax	By report — combined tax depending on registered gross weight of vehicle.
--------	-----------------------	---

**Example:** Tax rate is 49 mills on 60,000 pounds registered gross weight at 300 miles = \$14.70 tax due.

Utah	Mileage Tax	By report — .015 per mile on 60,000 pounds gross weight.
------	-------------	--

**Example:** 205 miles = \$3.08 tax due.

Vermont	Highway Use Tax	By report. \$5.00 per round trip assessed
---------	--------------------	---

as a retaliatory tax against vehicles licensed in non-reciprocal states who assess a similar tax against Vermont licensed vehicles.

Wyoming Compensation Fee

By report.  $1\frac{1}{2}$  mills per ton mile of unladen vehicle weight or 40% of gross weight, whichever is higher.

**Example:** Vehicle with unladen weight of 30,000 pounds times 419 miles = 1,257,000 pound miles divided by 2,000 (1 ton) = 6,285 ton miles times  $1\frac{1}{2}$  mills = \$9.43 tax due.

## FUEL CONSUMPTION BASED ON 5 MPG

Use this chart to determine the amount of fuel to purchase in each state.

Estimated Travel	Gallons To Purchase
25 miles	5 gallons
50 miles	10 gallons
75 miles	15 gallons
100 miles	20 gallons
125 miles	25 gallons
150 miles	30 gallons
175 miles	35 gallons
200 miles	40 gallons
225 miles	45 gallons
250 miles	50 gallons
275 miles	55 gallons
300 miles	60 gallons
325 miles	65 gallons
350 miles	70 gallons
375 miles	75 gallons
400 miles	80 gallons
425 miles	85 gallons
450 miles	90 gallons
475 miles	95 gallons
500 miles	100 gallons
525 miles	105 gallons
550 miles	110 gallons
575 miles	115 gallons
600 miles	120 gallons
625 miles	125 gallons
650 miles	130 gallons
675 miles	135 gallons
700 miles	140 gallons

**EXHIBIT D TO PARTIES' STIPULATION OF  
FACTS SUBMITTED TO VANDERBURGH  
SUPERIOR COURT.**

**(R. 645)**

December 16, 1968

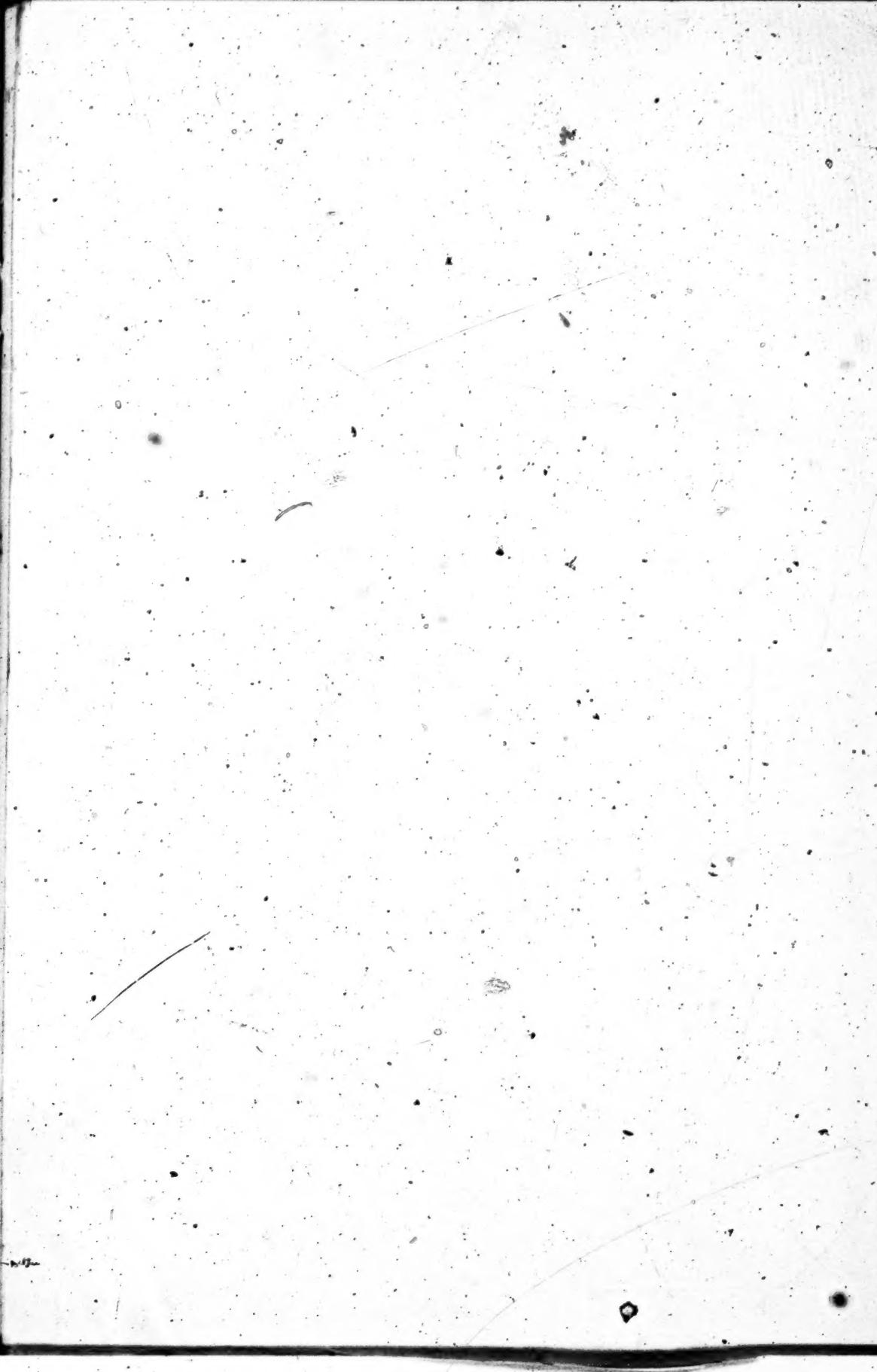
**PRELIMINARY CONSTRUCTION COST OF  
DEVELOPMENTS REQUIRED AT DRESS  
MEMORIAL AIRPORT BY THE YEAR 1975  
TO 1980**

Description of Items	S.F.	Unit Price	Amount
1. New Terminal			
Building	90.00	25.00	\$2,250,000.00
Contingency & Engineering @ 20%			450,000.00
Sub-Total Terminal Building Cost			<u>\$2,700,000.00</u>
2. Apron for			
9 Gates	160,000 S.Y.	12.00	1,920,000.00
Contingency for Engineering & 20%			384,000.00
Less FAA Participation @ 50%			<u>\$2,304,000.00</u>
Sub-Total Apron Costs			<u>\$1,152,000.00</u>
1. Access Road and			
Parking Area		L. S.	250,000.00
4. Extend NE-SW			
Runway	1,200'x150'	200.00	240,000.00
(Includes Lighting &			
Minor Drainage)			
Extend NE-SW			
Taxiway	1,200'x75'	100.00	120,000.00
Contingency & Engineering @ 20%			<u>\$ 360,000.000</u>
Less FAA Participation @ 50%			<u>72,000.00</u>
Sub-Total Runway & Taxiway			<u>\$ 432,000.00</u>
Ex. Cost			<u>216,000.00</u>
			<u>\$ 216,000.00</u>

## 6. Land Acquisition

	1,500.00/Acre	975,000.00
	650 Acres (Approx.)	
Acquire 30 Homes (Approx.)		
	20,000/Home	600,000.00
Site Preparation	L. S.	400,000.00
Relocate Highway 57*	L. S.	500,000.00
		<hr/>
Less FAA Participation @ 50%	—	1,237,500.00
Sub-Total Land Costs		\$1,237,500.00
6. Construct New Crosswind		
Runway 7,200'x150' 200.00		1,440,000.00
(Includes Lighting & Minor Drainage)		
Construct Parallel		
Taxiway 7,200'x75' 100.00		720,000.00
		<hr/>
Contingency & Engineering @ 20%		\$2,160,000.00
		<hr/>
Less FAA Participation @ 50%	—	432,000.00
Sub-Total Crosswind R/W & T/ Cost		\$2,592,000.00
Total Cost of All Items. (1 Through 6)		<hr/>
for Airport Authority District		\$6,901,000.00

\*Highway may be relocated or runway and taxiway could be constructed as bridges.



## TERMINAL BUILDING SPACE REQUIREMENTS FOR DRESS MEMORIAL AIRPORT

Description	Existing	Need for	Future Requirements				
	Installation (1968)	Existing Demand (1969)	1970	1975	1980	1985	1990
Annual Passenger Movements .....	360,000	360,000	480,000	765,000	1,025,000	1,320,000	1,500,000
Peak Hour Passenger Movements .....	232	232	300	459	578	702	750
Terminal Gates—Number (Probable)	4	4	8	9	9	16	11
Car Parking Spaces—Total (Public and Employee) .....	420	330	480	765	1,025	1,320	1,500
Public Parking .....	360	270	394	627	840	1,062	1,280
Employee Parking .....	60	60	86	138	185	238	270
Auto Rental (Ready) Spaces .....	25	40	51	76	92	109	113
Auto Rental (Storage) Spaces .....	170	170	228	340	428	519	555
Length of Ticket Counter—L.F. ....	48	100	120	150	60	190	200
Length of Baggage Claim Counter— L.F. ....	28	50	60	90	100	125	180
Waiting Room Seats (Number) (Includes Holding Area Also)	52	160	190	300	350	425	475
Airline Space							
Holding Area—S.F. ....	—	4,800	9,600	10,800	10,800	12,000	13,200
Ticket Counter S.F. ....	384	800	960	1,360	1,560	1,920	2,000
Operations S.F. ....	2,065	6,000	9,000	11,000	12,000	13,500	13,800
Baggage Claim S.F. ....	—	1,000	1,200	1,800	2,000	2,500	2,600
Storage Space S.F. ....	—	1,000	1,200	1,400	1,600	1,800	2,000
Maintenance S.F. ....	—	2,500	3,000	3,500	4,000	4,600	4,900
Cargo Space* S.F. ....	—	4,100	5,500	9,600	13,900	19,700	25,700
SUB-TOTAL AIRLINE SPACE ....	3,449	20,200	30,460	38,460	45,860	56,020	64,200
Other Space—1st Floor							
Ticket Lobby—S.F. ....	960	2,000	2,400	3,400	3,600	4,000	4,200
Waiting Room S.F. ....	576	2,800	3,300	4,600	5,500	7,000	7,500
T.V. Lounge S.F. ....	—	3000	360	420	480	540	600
Restaurant (Kitchen, Dinn. & Coffee Shop) ....	3,686	4,000	6,000	7,000	7,800	8,500	9,000
Bar—S.F. ....	984	1,000	1,000	1,000	1,200	1,500	2,000
Concession—S.F. ....	134	200	200	250	300	350	400
Insurance—S.F. ....	—	100	100	150	200	250	300
Public Toilets—S.F. ....	670	1,200	1,700	2,000	2,100	2,300	2,400
Barber Shop—S.F. ....	127	200	250	300	300	350	400
Rent-A-Car—S.F. ....	440	500	500	500	500	500	500
Mechanical & Equipment Room—S.F. ....	710	1,000	1,500	2,000	2,500	3,000	3,500

Description	Existing Installation (1968)	Existing Demand (1969)	Future Requirements				1980	1985	1990
			1970	1975	1980	1985			
Annual Passenger Movements .....	360,000	360,000	480,000	765,000	1,025,000	1,320,000	1,500,000		
Peak Hour Passenger Movements ....	232	232	300	459	578	702	750		
Terminal Gates—Number (Probable)	4	4	8	9	9	10	11		
Car Parking Spaces—Total									
(Public and Employee) .....	420	330	480	765	1,025	1,320	1,500		
Public Parking .....	360	270	394	627	840	1,082	1,290		
Employee Parking .....	60	60	86	138	185	238	270		
Auto Rental (Ready) Spaces .....	25	40	51	76	92	109	113		
Auto Rental (Storage) Spaces .....	170	170	228	340	428	519	555		
Length of Ticket Counter—L.F. ....	48	100	120	150	60	190	200		
Length of Baggage Claim Counter—									
L.F. ....	28	50	60	90	100	125	180		
Waiting Room Seats (Number) ....	52	160	190	300	350	425	475		
(Includes Holding Area Also)									
Airline Space									
Holding Area—S.F. ....	—	4,800	9,600	10,800	10,800	12,000	13,200		
Ticket Counter S.F. ....	384	800	960	1,360	1,560	1,920	2,000		
Operations S.F. ....	2,065	6,000	9,000	11,000	12,000	13,500	13,800		
Baggage Claim S.F. ....	—	1,000	1,200	1,800	2,000	2,500	2,600		
Storage Space S.F. ....	—	1,000	1,200	1,400	1,600	1,800	2,000		
Maintenance S.F. ....	—	2,500	3,000	3,500	4,000	4,600	4,900		
Cargo Space* S.F. ....	—	4,100	5,500	9,600	13,900	19,700	25,700		
SUB-TOTAL AIRLINE SPACE ....	3,449	20,200	30,460	38,460	45,860	56,020	64,200		
Other Space—1st Floor									
Ticket Lobby—S.F. ....	960	2,000	2,400	3,400	3,600	4,000	4,200		
Waiting Room S.F. ....	576	2,800	3,300	4,600	5,500	7,000	7,500		
T.V. Lounge S.F. ....	—	3000	360	420	480	540	600		
Restaurant (Kitchen, Dinn. & Coffee Shop) ....	3,686	4,000	6,000	7,000	7,800	8,500	9,000		
Bar—S.F. ....	984	1,000	1,000	1,000	1,200	1,500	2,000		
Concession—S.F. ....	134	200	200	250	300	350	400		
Insurance—S.F. ....	—	100	100	150	200	250	300		
Public Toilets—S.F. ....	670	1,200	1,700	2,000	2,100	2,300	2,400		
Barber Shop—S.F. ....	127	200	250	300	300	350	400		
Rent-A-Car—S.F. ....	440	500	500	500	500	500	500		
Mechanical & Equipment Room—S.F. ....	710	1,000	1,500	2,000	2,500	3,000	3,500		
SUB-TOTAL OTHER SPACE ....	8,287	13,300	17,310	21,620	24,480	28,290	30,800		
Concourse—S.F. ....		8,000	16,000	18,000	18,000	20,000	22,000		
Corridors, Vestibules, Entrance—									
Display Area—S.F. ....	1,577	3,690	4,900	5,950	6,850	7,900	8,400		
TOTAL BUILDING—1st FLOOR ..	13,313	45,190	68,670	84,030	95,190	112,210	125,400		

\* This will be a separate building.

\*\* Gates increased in a greater ratio than passengers, based upon greatly increased number of peak hour scheduled flights which will provide better service at Evansville.

**ORDER OF THE VANDERBURGH SUPERIOR  
COURT GRANTING PETITION OF  
WILLIAM F. WOOD TO INTERVENE**

**(R. 198)**

STATE OF INDIANA )

) SS:

COUNTY OF VANDERBURGH )

IN THE SUPERIOR COURT OF VANDERBURGH  
COUNTY

1969 TERM

DELTA AIRLINES, INC. )

EASTERN AIRLINES )

ALLEGHENY AIRLINES, INC., )

and WILLIAM F. WOOD, on )

behalf of himself and all other )

persons similarly situated, )

Plaintiffs ) NO. SC 68-328

vs. )

EVANSVILLE-VANDERBURGH )

AIRPORT AUTHORITY DIS- )

TRICT, KENNETH C. KENT, )

ELMO HOLDER, ROBERT M. )

LEICH, IAN F. LOCKHART, )

CLIFFORD K. ARDEN, and )

JAMES A. GEYER, )

Defendants )

ORDER OF JANUARY 17, 1969  
GRANTING PETITION TO INTERVENE

Comes now WILLIAM F. WOOD and files herein his verified petition to intervene as a party plaintiff herein on behalf of himself and all other persons similarly situated, and the Court, having considered the same and having permitted defendants herein to object to

said petition to intervene, now finds that the said WILLIAM F. WOOD is a person who frequently enplanes at Dress Memorial Airport and is a member of that class of persons who would be subject to the payment of the \$1.00 charge imposed by Ordinance No. 33 of the defendant EVANSVILLE-VANDERBURGH AIRPORT AUTHORITY DISTRICT; that the questions presented in this lawsuit are of common and general interest to many persons who will be subject to payment of said \$1.00 charge and that said persons constituting the class of enplaning air passengers upon commercial aircraft at Dress Memorial Airport are so numerous that it would be impracticable to bring them all before this Court as parties to this lawsuit; that the questions presented in this lawsuit involve legal rights of the petitioner and of the class of persons who would be subject to the payment of the said \$1.00 charge; that, by reason of said facts, the petitioner is directly interested in the subject matter and the disposition of this lawsuit and should be permitted to intervene as a party plaintiff herein on behalf of himself and all other persons similarly situated in order to fully protect and assert his interests and legal rights and the interests and legal rights of all other persons similarly situated; the Court further finds that said petition should be granted.

IT IS, THEREFORE, ORDERED that the petition of WILLIAM F. WOOD to intervene herein as a party plaintiff upon behalf of himself and all other persons similarly situated be, and the same is hereby, granted.

s / Benjamin E. Buente  
Benjamin E. Buente  
Judge, Superior Court of  
Vanderburgh County

**ORDER OF THE VANDERBURGH SUPERIOR  
COURT GRANTING PETITION OF  
PAUL E. HATFIELD TO INTERVENE  
(R. 225)**

STATE OF INDIANA )  
 ) SS:  
COUNTY OF VANDERBURGH )  
IN THE SUPERIOR COURT OF VANDERBURGH  
COUNTY  
1969 TERM

DETAILED STATEMENT OF PLEADINGS  
 DELTA AIRLINES, INC. )  
 EASTERN AIRLINES )  
 ALLEGHENY AIRLINES, INC., )  
 and WILLIAM F. WOOD, on )  
 behalf of himself and all other )  
 persons similarly situated )  
 Plaintiffs )  
 vs. ) No. SC 68-328  
 EVANSVILLE-VANDERBURGH )  
 AIRPORT AUTHORITY DIS- )  
 TRICT, KENNETH C. KENT, )  
 ELMO HOLDER, ROBERT M. )  
 LEICH, IAN F. LOCKHART, )  
 CLIFFORD K. ARDEN, and )  
 JAMES A. GEYER, )  
 Defendants )

## **ORDER GRANTING PETITION TO INTERVENE**

Comes now PAUL E. HATFIELD and files herein his verified petition to intervene as a party defendant herein on behalf of himself and all other persons similarly situated, and the Court, having considered the same and having permitted plaintiffs herein to object to said petition to intervene, now finds that the said Paul E. Hatfield is a person who frequently en-planes as a passenger upon commercial aircraft at

Dress Memorial Airport and is a member of that class of persons who would be benefited by the application and enforcement of Ordinance No. 33 of the defendant, Evansville-Vanderburgh Airport Authority District; that the questions presented in this lawsuit are of common and general interest to many persons who will benefit by the revenue to be raised by said Ordinance and that said persons constituting the class of enplaning air passengers upon commercial aircraft at Dress Memorial Airport are so numerous that it would be impracticable to bring them all before this Court as parties to this lawsuit; that the questions presented in this lawsuit involve legal rights of the petitioner and of the class of persons who would be benefited by the application and enforcement of Ordinance No. 33 and the revenues to be raised thereby; that, by reason of said facts, the petitioner is directly interested in the subject matter and the disposition of this lawsuit and should be permitted to intervene as a party defendant herein on behalf of himself and all other persons similarly situated in order to fully protect and assert his interests and legal rights and the interests and legal rights of all other persons similarly situated; the Court further finds that said petition should be granted.

IT IS, THEREFORE, ORDERED that the petition of Paul E. Hatfield to intervene herein as a party defendant upon behalf of himself and all other persons similarly situated be, and the same is hereby, granted.

s / Benjamin E. Buente  
Benjamin E. Buente  
Judge, Superior Court of  
Vanderburgh County

**IN THE VANDERBURGH SUPERIOR COURT:  
INTERVENING COMPLAINT OF WILLIAM F.  
WOOD FOR INJUNCTION**

**(R. 265)**

(Title Omitted in Printing)

## INTERVENING COMPLAINT FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

### PARAGRAPH I

Plaintiff WILLIAM F. WOOD, on behalf of himself and all other persons similarly situated, for his first cause of action alleges and says:

1. By order of the Superior Court of Vanderburgh County dated January 17, 1969, William F. Wood was granted leave to intervene herein as a party plaintiff on behalf of himself and all other persons similarly situated.

2. William F. Wood is a resident of Vanderburgh County, Indiana. During the year 1968, he enplaned as a passenger upon commercial aircraft at Dress Memorial Airport, Evansville, Indiana, approximately twenty-two times for destinations beyond the State of Indiana. During the year 1969, the said William F. Wood anticipates that he will enplane as an air passenger upon commercial aircraft at Dress Memorial Airport approximately fifteen times for destinations beyond the State of Indiana.

3. The defendant Evansville-Vanderburgh Airport Authority District is the owner and operator of Dress Memorial Airport in Vanderburgh County, State of Indiana, deriving its authority and power solely by statute, said statute being Burns' Ind. Ann. Stats. (1964 Repl.), Sections 14-1201 through 14-1235, said defendant Evansville-Vanderburgh Airport Authority District being expressly empowered by statute to sue and be sued in its own name, said statute being Burns' Ind. Ann. State. (1964 Repl.), Section 14-1215(1).

4. The defendant Kenneth C. Kent is a member and President of the Board of Directors of the Evansville-Vanderburgh Airport Authority District.
5. The defendant Elmo Holder is a member and Vice-President of the Board of Directors of the Evansville-Vanderburgh Airport Authority District.
6. The defendant Robert M. Leich is a member and Secretary of the Board of Directors of the Evansville-Vanderburgh Airport Authority District.
7. The defendant Ian F. Lockhart is a member of the Board of Directors of the Evansville-Vanderburgh Airport Authority District.
8. The defendant Clifford K. Arden is a member of the Board of Directors of the Evansville-Vanderburgh Airport Authority District.
9. The defendant James A. Geyer is the Airport Manager of Dress Memorial Airport and is the Treasurer of the Evansville-Vanderburgh Airport Authority District.
10. During the twelve (12) months preceding December 31, 1967, approximately 146,000 persons departed from Dress Memorial Airport upon commercial air carriers.
11. Enplaning air passengers constitute a minority of the users of Dress Memorial Airport. In 1967 there were 146,955 enplaning passengers and 145,142 deplaning passengers on air carrier flights. In 1967, in addition to some 14,834 takeoffs and landings by commercial air carriers, there were 84,598 takeoffs and landings by other civil aircraft, both local and itinerant, each resulting in the use of the airport facilities by one or more persons. There are also other users of the airport facilities, such as persons visiting the bar and res-

taurant, persons using the freight facilities, observers and others, all hereinafter more fully specified.

12. On February 26, 1968, the Board of Directors of the Evansville-Vanderburgh Airport Authority District enacted an ordinance known as Ordinance No. 33 which levies a charge of \$1.00 on every enplaning commercial air passenger at Dress Memorial Airport and directs the commercial airlines operating at Dress Memorial Airport, as vendors of airline tickets, to collect said charge for the Evansville-Vanderburgh Airport Authority District, a copy of said Ordinance being attached hereto, made a part hereof, and marked "Exhibit A."

13. Said Ordinance No. 33 was to take effect on July 1, 1968.

14. Said Ordinance No. 33 will require all airline passengers departing Dress Memorial Airport to pay a charge of \$1.00 as a condition for the right to go aboard (enplane upon) commercial aircraft at Dress Memorial Airport, the commercial airlines being directed by the terms of said ordinance to collect said charge of \$1.00 and impliedly being directed to refuse to permit any airline passenger to board their aircraft unless said charge has been paid, Section 1 of said Ordinance imposing the charge of \$1.00 upon every enplaning air passenger and Section 2 imposing upon all airlines, their agents and employees, the responsibility of collecting said charge.

15. Said charge of \$1.00 is purportedly imposed as a fee for the use of airport facilities, but said charge is, in fact, not imposed upon a majority of the users of the airport facilities, to-wit:

a. persons using the airport facilities after arrival

16

- a. at said airport upon commercial aircraft;
- b. persons using the airport facilities upon arrival to or departure from Dress Memorial Airport by means of non-commercial aircraft;
- c. persons and corporations using the airport facilities to transport and receive air freight shipments;
- d. persons using the airport facilities when meeting or seeing-off airline passengers;
- e. persons using the airport facilities for entertainment purposes in observing the arrival and departure of aircraft;
- f. persons using the airport facilities incidental to the use of dining and bar facilities and other facilities located at said airport; and
- g. other persons making use of the airport facilities who are not departing from said airport.

16. That the questions presented in this lawsuit are questions of common and general interest of many persons who will be subject to the aforesaid charge of \$1.00 to be paid for every enplanement upon commercial aircraft at Dress Memorial Airport, there having been approximately 146,000 enplanements upon commercial aircraft at Dress Memorial Airport during the 12 months preceding December 31, 1967. Said persons constituting the class of enplaning air passengers are numerous and it would be impracticable to bring them all before the Court as parties to this lawsuit.

17. Said Ordinance No. 33 will impose an undue and unreasonable burden upon the commerce among the several states and is in direct violation of Article 1,

Section 8, Clause 3, of the Constitution of the United States (Commerce Clause), in that:

- a. Said Ordinance is applied arbitrarily and unreasonably upon passengers traveling in interstate commerce without reference to the reasonable value of the services and facilities purportedly furnished said passengers, said charge being, in reality, a head tax imposed upon said interstate airline passengers as a condition of their departure from the State of Indiana and Vanderburgh County in that State via the Dress Memorial Airport.
- b. Said Ordinance, by its application solely to a single class of users of said airport, which class consists primarily of passengers traveling in interstate commerce, creates an undue and unreasonable burden upon interstate commerce.

18. Said Ordinance Number 33 will impose an undue and unreasonable burden upon the commerce among the several states in direct violation of Article 1, Section 8, Clause 3 of the Constitution of the United States (Commerce Clause). The imposition of said illegal and unconstitutional charge will penalize passengers seeking to depart Evansville and the State of Indiana by air, will induce passengers entirely to forego travel between the States, or to travel by commercial aircraft from other airports, or to travel by means of conveyance other than commercial aircraft, all to the diminution and impairment of interstate commerce.

19. The failure of or refusal by plaintiff or other enplaning passengers at Dress Memorial Airport to pay the unconstitutional charge imposed by said ordinance will expose plaintiff and other enplaning pas-

sengers to criminal liability under the following provisions of the Indiana Statute creating the Evansville-Vanderburgh Airport Authority District, to-wit:

"Any person who violates any of the provisions of this act, regulation, or ordinance enacted pursuant thereto, shall be guilty of a misdemeanor; and upon conviction shall be punished by a fine of not less than \$10.00 and not more than \$300.00, or by imprisonment of not more than six months, or both." (Burns' Ind. Ann. Stats. (1964 Repl.) Section 14-1234.)

20. That by reason of the foregoing, the plaintiff alleges that enforcement of said Ordinance No. 33 will, if not enjoined, cause great injury and damage to plaintiff and to all other persons similarly situated for which there is no adequate remedy, at law or in equity, other than such as can be granted by this Court through the medium of injunction.

21. If defendants are permitted to enforce said ordinance and collect the charges imposed thereby, the illegal and unconstitutional collection of said charges from airline passengers traveling in interstate commerce, or the refusal to pay said illegal charges, will, unless restrained and enjoined by this Court, expose plaintiff and other enplaning passengers to immediate and substantial injury, all in violation of the rights of plaintiff and other enplaning passengers for which they have no adequate remedy at law.

22. The deprivation of the constitutional rights of plaintiff and all other persons similarly situated and the illegal burden on interstate commerce are of such a grave and serious nature as to require the issuance forthwith by this Court of a temporary injunction to

preserve the status quo and to prevent immediate injury to plaintiff and all other persons similarly situated and to interstate commerce in the United States.

23. Plaintiff will provide an undertaking with adequate surety in an amount to be fixed by this Court sufficient to recompense the defendants for any loss, expense, or damage caused by the improvident or erroneous issuance of a temporary injunction.

WHEREFORE, plaintiff prays as follows:

A. That a temporary injunction be entered herein by this Court restraining and enjoining, until further order of this Court, the defendants named in the above and foregoing complaint and each of them, all employees and agents of the defendants, from:

1. Implementing the execution of said Ordinance No. 33 and from taking any steps to enforce the provisions of said Ordinance in any manner;
2. Requiring, compelling, demanding, or otherwise requesting that commercial airlines operating at Dress Memorial Airport and their employees and agents, make any collection of the charges imposed by said Ordinance No. 33 and from otherwise taking any action or causing any action to be taken against said airlines, and their employees and agents, inconsistent with the order of this Court that said Ordinance No. 33 not be enforced;
3. Instituting or causing to be instituted any criminal proceedings against the commercial airlines operating at Dress Memorial Airport or their employees and agents, for the non-collection of the charges imposed by said Ordinance No. 33.

4. Requiring, compelling, demanding, or otherwise requesting directly or indirectly, that any air passengers departing from Dress Memorial Airport make payments of the charges imposed by said Ordinance No. 33; from otherwise taking any action or causing any action to be taken against any air passenger inconsistent with the order of this Court that said Ordinance No. 33 not be enforced; and from taking any action whatsoever because of the nonpayment of said charges imposed by Ordinance No. 33, direct or indirect, which would in any manner interfere with the use of the airport facilities by said passengers and their departures from Dress Memorial Airport.
- B. That upon final hearing a permanent injunction be issued granting the relief prayed for in Paragraph A of this prayer and granting the plaintiff costs in such amount as the Court may determine.
- C. That this Court enter an order declaring said Ordinance No. 33 to be unconstitutional under Article 1, Section 8, Clause 3 of the Constitution of the United States.
- D. That the plaintiff have such further relief in the premises as may be just and equitable.

**WILLIAM F. WOOD, on behalf of  
himself and all other persons sim-  
ilarly situated**

s / Fred B. Bamberger  
Fred P. Bamberger

s / Jeffrey R. Kinney  
Jeffrey R. Kinney

**Of Counsel:**

**BAMBERGER, FOREMAN,  
OSWALD AND HAHN  
708 Hulman Building  
Evansville, Indiana 47708**

**Robert C. Barnard**

**John K. Mallory, Jr.**

**Cleary, Gottlieb, Steen and Hamilton  
1250 Connecticut Avenue, N.W.  
Washington, D.C. 20036**

**Attorneys for Plaintiffs**

**PARAGRAPH II**

Plaintiff William F. Wood, on behalf of himself and all other persons similarly situated, for his second cause of action alleges and says:

1. Plaintiff hereby adopts and realleges and incorporates by reference the allegations contained in rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Paragraph I of his complaint as if herein set in full.

2. Said Ordinance No. 33 denies and restrains citizens of the United States from exercising their right and privilege to move unhampered, unimpeded, and without restriction or restraint to and through the various States of the United States and is in direct violation and contravention of the Privileges and Immunities, Equal Protection, and Due Process Clauses of Amendment Fourteen of the Constitution of the United States, said Ordinance and charge imposed thereby being applied arbitrarily and indiscriminately upon interstate airline passengers thereby denying them their constitutional rights and privileges and im-

munities as aforesaid by compelling them to pay, as a condition for their departure from the State of Indiana via Dress Memorial Airport into interstate commerce, said charge which has no reasonable basis in fact to the services and facilities purportedly furnished said passengers, said charge being, in reality, a head tax imposed upon said interstate airline passengers as a condition for their departure from the State of Indiana via Dress Memorial Airport.

- 3. The failure of or refusal by plaintiff or other enplaning passengers at Dress Memorial Airport to pay the unconstitutional charge imposed by said Ordinance will result in plaintiff and other enplaning passengers being denied transportation by plane, or, if allowed to enplane, will expose plaintiff and other enplaning passengers to criminal liability under the following provisions of the Indiana Statute creating the Evansville-Vanderburgh Airport Authority District, to-wit:

“Any person who violates any of the provisions of this act, regulation, or ordinance enacted pursuant thereto, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$10.00 and not more than \$300.00, or by imprisonment of not more than six months, or both.” (Burns’ Ind. Ann. Stats. (1964 Repl.) Section 14-1234).

- 4. That by reason of the foregoing, the plaintiff alleges that enforcement of said Ordinance No. 33 will, if not enjoined, cause great injury and damage to plaintiff and other enplaning passengers for which there is no adequate remedy, at law or in equity, other than such as can be granted by this Court through the medium of injunction.

5. If defendants are permitted to enforce said Ordinance and collect the charges imposed thereby, the illegal and unconstitutional collection of said charges from airline passengers traveling in interstate commerce, or the refusal to pay said illegal charges, will, unless restrained and enjoined by this Court, expose plaintiff and other enplaning passengers to immediate substantial injury, all in violation of the rights of plaintiff and other enplaning passengers for which they have no adequate remedy at law.

6: If said Ordinance No. 33 is enforced, plaintiff and all other persons similarly situated who are citizens of the United States traveling in interstate commerce will be immediately inhibited and injured in their right to travel freely between the States and from place to place within the State of Indiana and will be placed in danger of arrest and prosecution for failure or refusal to pay the charge thereby imposed.

7. The magnitude of the violation of said passengers' rights secured to them by the Constitution of the United States and the resulting exposure of said passengers to grave and irreparable injury is of such a grave and serious nature as to require the issuance forthwith by this Court of a temporary injunction to preserve the status quo and to prevent immediate injury.

8. That plaintiff will provide an undertaking with adequate surety in an amount to be fixed by this Court sufficient to recompense the defendants for any loss, expense, or damage caused by the improvident or erroneous issuance of a temporary injunction.

WHEREFORE, plaintiff prays as follows:

A. That a temporary injunction be entered herein

by this Court restraining and enjoining, until further order of this Court, the defendants named in the above and foregoing complaint and each of them, and all employees and agents of the defendants, from:

1. Implementing the execution of said Ordinance No. 33 and from taking any steps to enforce the provisions of said Ordinance in any manner;
2. Requiring, compelling, demanding, or otherwise requesting that commercial airlines operating at Dress Memorial Airport and their employees and agents, make any collection of the charges imposed by said Ordinance No. 33 and from otherwise taking any action or causing any action to be taken against said airlines, and their employees and agents, inconsistent with the order of this Court that said Ordinance No. 33 not be enforced;
3. Instituting or causing to be instituted any criminal proceedings against the commercial airlines operating at Dress Memorial Airport or their employees and agents, for the noncollection of the charges imposed by said Ordinance No. 33.
4. Requiring, compelling, demanding, or otherwise requesting, directly or indirectly, that any air passengers departing from Dress Memorial Airport make payments of the charges imposed by said Ordinance No. 33; from otherwise taking any action or causing any action to be taken against any air passengers inconsistent with the order of this Court that said Ordinance No. 33 not be enforced; and from taking any action whatsoever because of the nonpayment of said charges imposed by Ordinance No. 33, direct or indirect, which would in any manner interfere

with the use of the airport facilities by said passengers and their departures from Dress Memorial Airport.

B. That upon final hearing a permanent injunction be issued granting the relief prayed for in Paragraph A of this prayer and granting the plaintiff costs in such amount as the Court may determine.

C. That this Court enter an order declaring said Ordinance No. 33 to be unconstitutional under the Privileges and Immunities, Equal Protection, and Due Process Clauses of the Constitution of the United States.

D. That the plaintiff have such further relief in the premises as may be just and equitable.

WILLIAM F. WOOD, on behalf of himself and all other persons similarly situated.

s / Fred P. Bamberger  
Fred P. Bamberger

s / Jeffrey R. Kinney  
Jeffrey R. Kinney

Of Counsel:

BAMBERGER, FOREMAN,  
OSWALD AND HAHN  
708 Hulman Building  
Evansville, Indiana 47708

Robert C. Barnard  
John K. Mallory, Jr.  
Cleary, Gottlieb, Steen and Hamilton  
1250 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
*Attorneys for Plaintiff*

## PARAGRAPH III

Plaintiff William F. Wood, on behalf of himself and all other persons similarly situated, for his third cause of action alleges and says:

1. Plaintiff hereby adopts and realleges and incorporates by reference the allegations contained in rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Paragraph I of his complaint as if herein set out in full.
2. Said Ordinance No. 33 imposes an arbitrary and discriminatory charge upon airline passengers departing Dress Memorial Airport and is in direct violation and contravention of the Equal Protection Clause of Amendment Fourteen of the Constitution of the United States and Article 1, Section 23, of the Constitution of the State of Indiana, said Ordinance imposing a charge upon enplaning airline passengers who are a minority class of users of the airport facilities purportedly for the use of airport facilities, but said Ordinance not imposing any charge upon deplaning passengers and other persons and corporations making like use of airport facilities either for transportation, air freight shipments, observation, dining and other uses, said charge additionally having no reasonable relation to the service and facilities purportedly furnished said passengers and being wholly arbitrary and unreasonable.
3. The failure of or refusal by plaintiff or other enplaning passengers at Dress Memorial Airport to pay the unconstitutional charge imposed by said Ordinance will expose plaintiff and other enplaning passengers to criminal liability under the following provisions of the

Indiana Statute creating the Evansville-Vanderburgh Airport Authority District, to-wit:

"Any person who violates any of the provisions of this act, regulation, or ordinance enacted pursuant thereto, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$10.00 and not more than \$300.00, or by imprisonment of not more than six months, or both." (Burns' Ind. Ann. Stats. (1964 Repl.) Section 14-1234).

4. That by reason of the foregoing, the plaintiff alleges that enforcement of said Ordinance No. 33 will, if not enjoined, cause great injury and damage to plaintiff and other enplaning passengers at Dress Memorial Airport for which there is no adequate remedy, at law or in equity, other than such as can be granted by his Court through the medium of injunction.

5. If defendants are permitted to enforce said Ordinance and collect the charges imposed thereby, the illegal and unconstitutional collection of said charges from airline passengers traveling in interstate commerce, or the refusal to pay said illegal charges, will, unless restrained and enjoined by this Court, expose plaintiff and other enplaning passengers to immediate and substantial injury, all in violation of the rights of plaintiff and other enplaning passengers for which they have no adequate remedy at law.

6. The deprivation of the constitutional rights of plaintiff and all other persons similarly situated is of such a grave and serious nature as to require the issuance forthwith by this Court of a temporary injunction to preserve the status quo and to prevent immediate injury to plaintiff and all other persons similarly situated.

7. Plaintiff will provide an undertaking with adequate surety in an amount to be fixed by this Court sufficient to recompense the defendants for any loss, expense, or damage caused by the improvident or erroneous issuance of a temporary injunction.

WHEREFORE, plaintiff prays as follows:

A. That a temporary injunction be entered herein by this Court restraining and enjoining, until further order of this Court, the defendants named in the above and foregoing complaint and each of them, and all employees and agents of the defendants, from:

1. Implementing the execution of said Ordinance No. 33 and from taking any steps to enforce the provisions of said Ordinance in any manner;
2. Requiring, compelling, demanding, or otherwise requesting that commercial airlines operating at Dress Memorial Airport and their employees and agents, make any collection of the charges imposed by said Ordinance No. 33 and from otherwise taking any action or causing any action to be taken against said airlines, and their employees and agents, inconsistent with the order of this Court that said Ordinance No. 33 not be enforced;
3. Instituting or causing to be instituted any criminal proceedings against the commercial airlines operating at Dress Memorial Airport or their employees and agents, for the noncollection of the charges imposed by said Ordinance No. 33.
4. Requiring, compelling, demanding, or otherwise requesting, directly or indirectly, that any air passengers departing from Dress Memorial Air-

port make payments of the charges imposed by said Ordinance No. 33; from otherwise taking any action or causing any action to be taken against any air passengers inconsistent with the order of this Court that said Ordinance No. 33 not be enforced; and from taking any action whatsoever because of the nonpayment of said charges imposed by Ordinance No. 33, direct or indirect, which would in any manner interfere with the use of the airport facilities by said passengers and their departures from Dress Memorial Airport.

B. That upon final hearing a permanent injunction be issued granting the relief prayed for in Paragraph A of this prayer and granting the plaintiff costs in such amount as the Court may determine.

C. That this Court enter an order declaring said Ordinance No. 33 to be unconstitutional under the Equal Protection Clauses of Amendment Fourteen of the Constitution of the United States and Article 1, Section 23 of the Constitution of the State of Indiana.

D. That the plaintiff have such further relief in the premises as may be just and equitable.

WILLIAM F. WOOD, on behalf of  
himself and all other persons similarly situated

s / Fred P. Bamberger  
Fred P. Bamberger

s / Jeffrey R. Kinney  
Jeffrey R. Kinney

## Of Counsel:

BAMBERGER, FOREMAN,  
OSWALD AND HAHN  
708 Hulman Building  
Evansville, Indiana 47708  
Robert C. Barnard  
John K. Mallory, Jr.

Cleary, Gottlieb, Steen and Hamilton  
1250 Connecticut Avenue, N.W.  
Washington, D.C. 20036

*Attorneys for Plaintiff*

#### PARAGRAPH IV

Plaintiff William F. Wood, on behalf of himself and all other persons similarly situated, for his fourth cause of action alleges and says:

1. Plaintiff hereby adopts and realleges and incorporates by reference the allegations contained in rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Paragraph I of his complaint as if herein set out in full.
2. That the charge imposed by said Ordinance bears no reasonable relation to any facilities or services purportedly furnished to enplaning airline passengers and has no basis in fact, the charge of \$1.00 being wholly arbitrary and not taking into consideration the different and varied uses and non-uses of airport facilities, or the actual needs for revenue for the maintenance and operation of said airport.
3. That, additionally, said charge is wholly discriminatory and places the entire levy upon only a minority class of the persons using said airport facilities, de-

planing air passengers and other person and corporations using the airport facilities for non-commercial flights, air freight shipments, observations, dining and other uses not being required to pay any charge whatsoever.

4. That the statute which is purportedly the authority for the enactment of said Ordinance and the imposition of said charge (Burns' Ind. Ann. Stats. (1946 Repl.) Section 14-1215, Clauses 9 and 16) does not, in fact, contain legislative authorization for the enactment of an ordinance imposing an arbitrary and discriminatory charge upon enplaning airline passengers, said charge being, in reality, a wholly arbitrary, discriminatory, and unreasonable head tax levied against a minority class of airport users.

5. That, by reason of the foregoing, the Ordinance imposing said charge is wholly illegal as an ultra vires act of the defendant Evansville-Vanderburgh Airport Authority District, there being no statutory delegation by the General Assembly of the State of Indiana of the power to enact such an Ordinance and levy the charge imposed thereunder, said Ordinance Number 33 therefore being wholly void for want of jurisdiction.

6. That, additionally, the imposition of said charge which is in reality a tax imposed upon enplaning air passengers, who are a minority class of airport users, is in direct violation and contravention of Article 10, Section 1, of the Constitution of the State of Indiana, said tax not being provided for by the General Assembly of the State of Indiana, the power to impose such a tax not being delegated by the General Assembly of the State of Indiana, and the tax not being uniformly and equally imposed upon all persons who make use of facilities at Dress Memorial Airport.

7. The failure of or refusal by plaintiff or other enplaning air passengers at Dress Memorial Airport to pay the illegal charge imposed by said Ordinance will expose plaintiff and other enplaning passengers to criminal liability under the following provisions of the Indiana Statute creating the Evansville-Vanderburgh Airport Authority District, to-wit:

"Any person who violates any of the provisions of this act, regulation, or ordinance enacted pursuant thereto, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$10.00 and not more than \$300.00, or by imprisonment of not more than six months, or both." Burns' Ind. Ann. Stats. (1964 Repl.) Section 14-1234).

8. That by reason of the foregoing the plaintiff alleges that enforcement of said Ordinance No. 33 will, if not enjoined, cause great injury and damage to plaintiff and to all other persons similarly situated for which there is no adequate remedy, at law or in equity, other than such as can be granted by this Court through the medium of injunction.

9. If defendants are permitted to enforce said Ordinance and collect the charges imposed thereby, the illegal and unconstitutional collection of said charges from airline passengers traveling in interstate commerce, or the refusal to pay said illegal charges, will, unless restrained and enjoined by this Court, expose plaintiff and other enplaning passengers to immediate and substantial injury, all in violation of the rights of plaintiff and other enplaning passengers for which they have no adequate remedy at law.

10. The deprivation of the rights of plaintiff and all

other persons similarly situated and the illegality of the conduct of the defendants are of such a grave and serious nature as to require the issuance forthwith by this Court of a temporary injunction to preserve the status quo and to prevent immediate injury to plaintiff and all other persons similarly situated.

11. That plaintiff will provide an undertaking with adequate surety in an amount to be fixed by this Court sufficient to recompense the defendants for any loss, expense, or damage caused by the improvident or erroneous issuance of a temporary injunction.

WHEREFORE, plaintiff prays as follows:

A. That a temporary injunction be entered herein by this Court restraining and enjoining, until further order of this Court, the defendants named in the above and foregoing complaint and each of them, and all employees and agents of the defendants, from:

1. Implementing the execution of said Ordinance No. 33 and from taking any steps to enforce the provisions of said Ordinance in any manner;
2. Requiring, compelling, demanding, or otherwise requesting that commercial airlines operating at Dress Memorial Airport and their employees and agents, make any collection of the charges imposed by said Ordinance No. 33 and from otherwise taking any action or causing any action to be taken against said airlines, and their employees and agents, inconsistent with the order of this Court that said Ordinance No. 33 not be enforced;
3. Instituting or causing to be instituted any criminal proceedings against the commercial airlines operating at Dress Memorial Airport or their em-

ployees and agents, for the noncollection of the charges imposed by said Ordinance No. 33.

4. Requiring, compelling, demanding, or otherwise requesting, directly or indirectly, that any air passengers departing from Dress Memorial Airport make payments of the charges imposed by said Ordinance No. 33; from otherwise taking any action or causing any action to be taken against any air passengers inconsistent with the order of this Court that said Ordinance No. 33 not be enforced; and from taking any action whatsoever because of the nonpayment of said charges imposed by Ordinance No. 33, direct or indirect, which would in any manner interfere with the use of the airport facilities by said passengers and their departures from Dress Memorial Airport.

B. That upon final hearing a permanent injunction be issued granting the relief prayed for in Paragraph A of this prayer and granting the plaintiff costs, in such amount as the Court may determine.

C. That this Court enter an order declaring said Ordinance No. 33 to be illegal and void by reason of the non-existence of delegated legislative authority for the enactment of such Ordinance and unconstitutional as in violation of Article 10, Section 1, of the Constitution of the State of Indiana.

D. That the plaintiff have such further relief in the premises as may be just and equitable.

WILLIAM F. WOOD, on behalf of  
himself and all other persons sim-  
ilarly situated

s / Fred P. Bamberger  
Fred P. Bamberger

s / Jeffrey R. Kinney  
Jeffrey R. Kinney

Of Counsel:

BAMBERGER FOREMAN,  
OSWALD AND HAHN  
708 Hulman Building  
Evansville, Indiana 47708

Robert C. Barnard

John K. Mallory, Jr.

Cleary, Gottlieb, Steen and Hamilton  
1250 Connecticut Avenue, N.W.  
Washington, D.C. 20036

*Attorneys for Plaintiff*

(Jurat Verification and Certificate of Service  
Omitted in Printing)

**EVANSCVILLE-VANDERBURGH AIRPORT  
AUTHORITY DISTRICT**

**ORDINANCE NO. 33**

**AN ORDINANCE ESTABLISHING AND FIXING  
A USE AND SERVICE CHARGE FOR ALL EN-  
PLANING PASSENGERS UTILIZING AIRPORT  
PREMISES AND FACILITIES.**

WHEREAS, the Acts of the Indiana General Assembly, 1959, Chapter 15, Section 20, provides that the acquiring, establishment, construction, improvements, equipment and maintenance and the control and operation of Airports and landing fields for aircraft under and pursuant to the Act creating the Evansville-Vanderburgh Airport Authority District, shall and are hereby declared to be a governmental function of general public necessity and benefit, and shall be for the use and general welfare of all of the people of the State of Indiana, as well as all of the people residing in the District of said Board, the same being coterminous with the boundaries of Vanderburgh County, Indiana; and

WHEREAS, the Evansville-Vanderburgh Airport Authority District was duly created under and pursuant to the terms and provisions of the Acts of the Indiana General Assembly, 1959, Chapter 15, and upon its creation and establishment, said Airport Authority District assumed the responsibility for the care, construction, improvement, equipment, maintenance and control of the Dress Memorial Airport located in Evansville, Vanderburgh County, Indiana; and

WHEREAS, the Board of Evansville-Vanderburgh Airport Authority District is empowered, pursuant to said Acts of the Indiana General Assembly, to enact

ordinances for the purpose of adopting a schedule of rates and charges and to collect the same from all users of facilities and services provided by said Dress Memorial Airport; and

WHEREAS, the Evansville-Vanderburgh Airport Authority District, pursuant to said Acts of the Indiana General Assembly, has the further power to fix, charge and collect rentals, tolls, fees and charges to be paid for the use of the whole or any part or parts of said Dress Memorial Airport and to fix, charge and collect fees for public admissions and privileges; and

WHEREAS, the Board of Evansville-Vanderburgh Airport Authority District has determined, upon investigation, that the use of said Airport and its various facilities is enjoyed by persons and taxpayers not only residing in Vanderburgh County, Indiana, but by numerous persons residing outside the jurisdiction of said District who do not directly contribute toward the support, construction, improvement, equipment, maintenance and control of said Airport and its facilities; and

WHEREAS, the Board of said Airport Authority District has determined that there exists a need for additional revenue with which to defray the continued and future costs of construction, improvement, equipment and maintenance of said Airport so as to provide for the reasonable safety, convenience and comfort of enplaning passengers using the facilities of Dress Memorial Airport; and

WHEREAS, the Board of said Evansville-Vanderburgh Airport Authority District, after due and deliberate consideration, has determined that the responsibility for the support, construction, improvement, equipment and maintenance of said Airport and its facilities, lies and should be shared more equally by

all those persons who enjoy and use its facilities and services;

NOW, THEREFORE, BE IT RESOLVED by the Board of Evansville-Vanderburgh Airport Authority District as follows:

**Section 1.** Commencing on July 1, 1968, there is hereby fixed, created and established a use and service charge of One Dollar (\$1.00) for each passenger enplaning any commercial aircraft operated from the Dress Memorial Airport.

**Section 2.** Each commercial airline now or hereafter operating commercial aircraft to and from the Dress Memorial Airport is hereby charged, together with its various agents and travel agencies, servants, employees and representatives, with the responsibility of collecting said use and service charge.

**Section 3.** Said commercial airlines are hereby further directed to remit to Evansville-Vanderburgh Airport Authority District all the use and service charges so collected:

- (a) for the period commencing July 1 and terminating December 31 of each year, on or before January 31 next following said six month period;
- (b) for the period commencing January 31 and terminating June 30 of each year, on or before July 31 next following said six month period..

Said remittance shall be based upon the number of enplaning passengers at Dress Memorial Airport as hereinabove described in Section 2 of this Ordinance, times the use and service charge of One Dollar (\$1.00), less six percent (6%) of all amounts so collected, which percentage is hereby allocated and allowed to said air-

lines for the purpose of defraying the administrative costs of collecting and remitting said use and service charge.

**Section 4.** The term "each passenger enplaning any commercial aircraft operated from the Dress Memorial Airport" shall not include, nor shall the use and service charge hereby created, apply to any active members of the United States Armed Forces enplaning aircraft at the Dress Memorial Airport, or any person purchasing an airline ticket having, as an initial point of departure, a locality other than Dress Memorial Airport, and whose flight either terminates or requires an intermediate or temporary stop at Dress Memorial Airport.

**Section 5.** All revenue collected from said use and service charges shall be held by the Evansville-Vanderburgh Airport Authority District in a separate fund for the purpose of defraying the present and future costs incurred by said Airport Authority in the construction, improvement, equipment, and maintenance of said Airport and its facilities for the continued use and future enjoyment by all users thereof.

**Section 6.** If any provision or clause of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**Section 7.** This Ordinance shall be in full force and effect upon its passage and approval by the Board of Evansville-Vanderburgh Airport Authority District as provided by law, and shall remain in full force and

effect until amended, modified or revoked by the Board of said District.

PASSED by the Board of Evansville-Vanderburgh Airport Authority District on this 26th day of February, 1968, and on said day signed by the President and attested by the Secretary of Evansville-Vanderburgh Airport Authority District.

/s/ Kenneth C. Kent  
Kenneth C. Kent, President

ATTEST:

/s/ Robert M. Leich  
Robert M. Leich, Secretary

STATE OF INDIANA )  
 ) SS:  
COUNTY OF VANDERBURGH )

I, the undersigned, Secretary of the Evansville-Vanderburgh Airport Authority District, do hereby certify that the attached Ordinance No. 33 consisting of four pages is a full, true, and correct copy of Ordinance No. 33 which was passed by the Board of Directors of the Evansville-Vanderburgh Airport Authority District on February 26, 1968.

I further certify that the attached Ordinance No. 33 is presently in force and will take effect on the first day of July, 1968.

/s/ Robert M. Leich  
Robert M. Leich, Secretary  
Evansville-Vanderburgh Airport  
Authority District

SUBSCRIBED and SWORN to before me, a Notary Public, in and for said County and State this 24th day of June, 1968.

/s/ Howard P. Trockman  
Howard P. Trockman  
Notary Public

My Commission expires:

1-8-72

**FINDINGS OF FACT AND CONCLUSIONS  
OF LAW OF THE VANDERBURGH  
SUPERIOR COURT**

**(R. 314)**

(Title Omitted in Printing)

### **SPECIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court, pursuant to the written request of the plaintiffs heretofore filed prior to the hearing on the temporary injunction in this cause, now makes the following special findings of fact and conclusions of law, to-wit:

#### **SPECIAL FINDINGS OF FACT**

1. William F. Wood, a resident of Vanderburgh County, Indiana, enplaned as a passenger upon commercial aircraft at Dress Memorial Airport, Evansville, Indiana, approximately twenty-two times for destinations beyond the State of Indiana during the year 1968, said trips being for both business and pleasure. The said William F. Wood expects to enplane as a passenger upon commercial aircraft approximately fifteen times during the year 1969.
2. Based upon the number of enplaning passengers upon commercial aircraft at Dress Memorial Airport during the years previous to 1969, it can be reasonably expected that approximately 150,000 persons will enplane as passengers upon commercial aircraft at Dress Memorial Airport during the year 1969. All of said persons, with the exception of active military personnel, would be subject to the payment of the \$1.00 charge imposed by Ordinance No. 33 enacted by the defendant, Evansville-Vanderburgh Airport Authority District. Said class of enplaning passengers are numerous and it would be impracticable to bring them all before the Court as parties to this lawsuit. The questions presented in this lawsuit are of common and

general interest of many persons who would be subject to the payment of the \$1.00 charge imposed by said Ordinance No. 33.

3. Delta Air Lines, Inc., is a corporation organized under the laws of the State of Louisiana and is duly authorized to transact business in the State of Indiana.

4. Eastern Airlines is a corporation organized under the laws of the State of Delaware and is duly authorized to transact business in the State of Indiana.

5. Allegheny Airlines, Inc., successor to Lake Central Airlines, Inc., is a corporation organized under the laws of the State of Delaware and is duly authorized to transact business in the State of Indiana.

6. The Evansville-Vanderburgh Airport Authority District is the owner and operator of Dress Memorial Airport in Vanderburgh County, Indiana.

7. Kenneth C. Kent, Elmo Holder, Robert M. Leich, Ian F. Lockhart, and Clifford K. Arden are members of the Board of Directors of the Evansville-Vanderburgh Airport Authority District.

8. James A. Geyer is the airport manager of Dress Memorial Airport and is the Treasurer of the Evansville-Vanderburgh Airport Authority District.

9. Eastern Airlines and Allegheny Airlines, Inc. are commercial air carriers transporting passengers, freight, express, and mail to and from Dress Memorial Airport solely in interstate commerce. Delta Air Lines, Inc., is a commercial air carrier transporting passengers, freight, express, and mail to and from Dress Memorial Airport in interstate and intrastate commerce. Each of the plaintiff airlines are air carriers operating under Certificates of Public Convenience and Ne-

cessity issued by the Civil Aeronautice Board and are duly authorized pursuant to said Certificates to operate commercial aircraft and to enplane and deplane commercial air passengers, express, freight, and mail therefrom at Dress Memorial Airport between specified cities set forth in said Certificates. Each of the plaintiff airlines leases and operates facilities at Dress Memorial Airport for the purposes of providing commercial air passenger and freight service. The facilities operated by the plaintiff airlines include air passenger ticket counters, offices, storage space and other facilities.

10. Each of the plaintiff airlines has entered into lease agreements with the defendant, Evansville-Vanderburgh Airport Authority District, as the lessor, for facilities at Dress Memorial Airport, Evansville, Indiana. Each of said leases contain the following provisions.

**"ARTICLE I — Premises.** Lessor does hereby demise and let unto Lessee, and Lessee does hereby hire and lease from Lessor, the following premises and facilities, rights, licenses and privileges on and in connection with the property and improvements of Lessor on the Airport, all as more particularly hereinafter set forth:

(a) **Use of Airport.** The use by Lessee, its employees, passengers, guests, patrons and invitees, in common with other duly authorized users of the Airport and appurtenances, together with all facilities, improvements, equipment and services which have been or may hereafter be provided for common use at or in connection with said Airport.

(b) **Specific Rights at Airport.** In addition to all rights elsewhere granted in this agreement, Lessee

shall have the right to use the Airport for the following purposes:

- (1) The operation of a transportation system by aircraft for the carriage of persons, property and mail, including all activities reasonably necessary to such operation (hereinafter referred to as 'air transportation');
- (2) The landing, taking off, loading, unloading, repairing, maintaining, conditioning, servicing, parking or storing of aircraft or other equipment;
- (3) The training at the Airport of personnel in the employ of or to be employed by Lessee and the testing of aircraft and other equipment, it being understood that such training and testing shall be incident to use of the Airport in the operation by Lessee of its air transportation system;
- (4) The sale, disposal or exchange of Lessee's aircraft, engines, accessories, gasoline, oil, greases, lubricants and other equipment, fuel and supplies; provided, that this subsection shall not be construed as authorizing the conduct of a separate regular business by Lessee, but as permitting Lessee to enter into such transactions as incidents of its operation of an air transportation system, and, specifically, as permitting the sale or disposal of any article or goods used by, or bought for use by, the Lessee in connection with its operation of an air transportation system;
- (5) The servicing by Lessee or its suppliers, at convenient locations, of aircraft and other equipment, by truck or otherwise, with gasoline, oil, grease and any other fuel or other supplies required by Lessee; such right shall include, without limiting

the generality hereof, the right to erect or install and maintain on the Airport adequate storage facilities for such gasoline, oil, greases and other fuel or supplies, at convenient locations, in accordance with insurance underwriters' standards, together with the necessary pipes, pumps, motors, filters and other appurtenances incidental to the use thereof; such structures and appurtenances to be and remain the severable property of Lessee. Provided, however, that it is specifically understood and agreed that if Lessee shall require the use or employment of Lessor's available land or improvements for the purpose of erecting and maintaining such storage facilities or other structures which may be required from time to time by Lessee, under this lease, this agreement shall not be construed so as to authorize Lessee to use such land without additional charges. In such event, Lessee agrees to negotiate with Lessor for the use of such land and Lessor shall endeavor to make the same available to Lessee upon reasonable rates, terms and conditions.

(6) The loading and unloading of persons, property and mail at the Airport by such motor vehicles or other means of conveyance as Lessee may desire or require in the operation of its air transportation system, with the right to designate the particular carrier or carriers who shall or may regularly transport Lessee's mail and cargo to and from the Airport;

(7) The purchase at the Airport of Lessee's requirements of gasoline, fuel, lubricating oil, grease, food and other passenger supplies, and any other materials and supplies from any person or company of Lessee's choice, and the making of

agreements with any person or company of Lessee's choice for work to be done for Lessee;

(8) The installation and operation of identifying signs on the leased premises, the general type and design of such signs to be subject to the approval of the Airport Manager; such approval, however, not to be arbitrarily withheld;

(9) The installation, maintenance and operation of such radio, communication, meteorological and aerial navigation equipment and facilities in, on and about the premises herein leased and said Airport as may be necessary or convenient in the opinion of the Lessee for its operations; provided, that the location of such equipment and facilities as might interfere with full and proper use of the Airport shall be subject to the approval of the Airport Manager, such approval not to be arbitrarily withheld;

(c) **Exclusive Space in the Administration Building.** For the term and at the rental hereafter stipulated, Lessee shall have the exclusive right to the following areas, all of which are more fully designated and delineated on Exhibit 'A' attached hereto and made a part hereof; to-wit:

\_\_\_\_\_ square feet of interior Administration Building Office space, the location of which is indicated by Exhibit 'A' attached hereto and made a part hereof.

\_\_\_\_\_ square feet of exterior Administration Building Canopy space, the location of which is indicated by Exhibit 'A' attached hereto and made a part hereof.

\_\_\_\_\_ square feet of fuel tank farm facilities,

the location of which is indicated by Exhibit 'B' attached hereto and made a part hereof.

It being understood that Lessee has the right to the areas stipulated above for such uses as it may desire to make thereof in connection with or incidental to its operation of an air transportation system. The Lessee shall have the right and option at any time and from time to time during the term hereof and any extension or renewal, to lease, for the exclusive use of itself or of any air transport company subsidiary to or affiliated with it, any additional space at the Airport not necessary to the Lessor's operation of the Airport and at the time not leased to others, whether such space is adjacent to the space leased hereunder or otherwise, together with any or all rights, facilities, licenses and privileges appurtenant to such space and to the Airport, upon the same general terms and conditions as are herein established.

(d) **Parking Space.** The use by Lessee, its employees, in common only with the other air transport operators who may be lessees of space at the Airport and their employees of adequate vehicular parking space located as near as possible to the Administration Building, without charge to Lessee or to said employees.

(e) **Right of Access, Ingress and Egress.** The full and unrestricted rights of access, ingress and egress with respect to the premises outlined in (a) to (d) above, for Lessee, its employees, passengers, guests, patrons, invitees, suppliers of materials, and furnishers of service, its or their aircraft, equipment, vehicles, machinery and other property, without

charge to Lessee, or to said persons or property, other than a reasonable charge to passengers for automobile parking.\*\*\*

**"ARTICLE VIII — No Further Charges, Fees or Taxes.** No rentals, fees, license, excise or operating taxes, tolls or other charges, except those herein expressly provided, shall be charged against or collected from directly or indirectly, the Lessee for the privileges of buying, selling, using, storing, withdrawing, handling, consuming or transporting materials or other supplies to, from or on the Airport; of making or performing agreements for work, materials or services at the Airport; of transporting, loading, unloading, or handling persons, property or mail to, from or on the Airport; or for any other of the premises, facilities, rights, licenses and privileges granted in this lease."

11. On June 28, 1968, Delta Air Lines, Inc., operated nine (9) regularly scheduled flights daily from Dress Memorial Airport, of which three (3) flights were direct flights to locations beyond the State of Indiana; five (5) flights terminated at locations beyond the State of Indiana with intermediate stops in Indiana; and one (1) flight terminated solely within the State of Indiana. In January, 1969, Delta Air Lines, Inc., was operating nine (9) regularly scheduled daily flights of which five (5) are direct flights to locations beyond the State of Indiana. Three (3) flights terminate at locations beyond the State of Indiana with intermediate stops in Indiana, and one (1) flight terminates in Indiana. During the twelve months preceding December 31, 1967, Delta Air Lines, Inc., carried 73,634 passengers enplaning at Dress Memorial Airport, a majority of whom were carried to destinations beyond the State

of Indiana.

12. On June 28, 1968, and continuing through the present time, Eastern Airlines has operated six (6) regularly scheduled flights daily from Dress Memorial Airport, all of which are direct flights to locations beyond the State of Indiana. During the twelve months preceding December 31, 1967, Eastern Airlines carried 59,400 passengers enplaning at Dress Memorial Airport, all of whom were carried to destinations beyond the State of Indiana.

13. On June 28, 1968, Lake Central Airlines, Inc., operated two (2) regularly scheduled flights daily from Dress Memorial Airport, both of which were direct flights to locations beyond the State of Indiana. In January, 1969, Allegheny Airlines, Inc., successor to Lake Central Airlines, Inc., continues to operate two (2) regularly scheduled flights daily from Dress Memorial Airport which are direct flights to locations beyond the State of Indiana. During the twelve months preceding December 31, 1967, Lake Central Airlines, Inc., carried 13,679 passengers enplaning at Dress Memorial Airport, all of which were carried to destinations beyond the State of Indiana.

14. During the twelve months preceding June 30, 1967, a total of 128,396 persons departed from Dress Memorial Airport upon scheduled and nonscheduled commercial air carriers.

15. In the year 1967, there were 146,955 enplaning passengers and 145,142 deplaning passengers on air carrier flights at Dress Memorial Airport. In 1967, there were some 14,834 take-offs and landings by commercial air carriers at Dress Memorial Airport. In the same year, there were 84,598 take-offs and landings by

other civil and military aircraft, both local and itinerant, as follows:

A. Itinerant take-offs and landings	1,329
B. Itinerant civil take-offs and landings	49,959
C. Local military take-offs and landings	1,077
D. Local civil take-offs and landings	14,639

16. In 1966, 88.4% of the persons departing Dress Memorial Airport upon plaintiff airlines enplaned for ultimate destinations beyond the State of Indiana. At the present time, the percentage of persons departing Dress Memorial Airport upon commercial airlines for ultimate destinations beyond the State of Indiana is approximately 88% of all persons enplaning upon commercial aircraft at Dress Memorial Airport.

17. Dress Memorial Airport is the only commercial airport within an area of approximately 100 miles of Evansville, Indiana, with the exception of Owensboro, Kentucky, and Dress Memorial Airport serves a large portion of southeastern Illinois and northwestern Kentucky as well as southwestern Indiana. A substantial number of persons (estimated at approximately 40%) using Dress Memorial Airport are citizens of the States of Kentucky and Illinois, and their journeys originate in those states.

18. On February 26, 1968, the Board of the Evansville-Vanderburgh Airport Authority District enacted an ordinance known as Ordinance No. 33 which levies a charge of \$1.00 on every enplaning commercial air passenger at Dress Memorial Airport with exceptions for active military personnel and persons temporarily stopping at Dress Memorial Airport enroute to other destinations; said Ordinance imposes upon the commercial air carriers operating at Dress Memorial Air-

port the duty of collecting said \$1.00 charge; said Ordinance was to take effect on July 1, 1968.

19. The airport facilities at Dress Memorial Airport include but are not necessarily limited to the following facilities and services:

- (1) Main Terminal Building
  - air passenger service counters
  - air freight service counters and facilities
  - waiting room
  - rest rooms
  - dining room
  - bar
  - lunch counter
  - newsstand
  - barber shop
  - display areas
  - taxi stands
  - car rental counters
  - baggage facilities
  - telephone booths
- (2) Other Facilities
  - private hangar facilities
  - nonscheduled airline hangar facilities, office space, and waiting areas
  - entrance and exit facilities and sidewalks
  - parking lots
  - fuel storage areas
  - office space
  - runways and taxi-ways
  - approach lighting system
  - instrument lighting system

20. In addition to the use of one or more of the airport facilities and services by enplaning air passen-

gers, one or more of the foregoing facilities and services are also used by the following persons who constitute a majority of the users of facilities and services at Dress Memorial Airport but who are not subject to payment of the \$1.00 charge imposed by Ordinance No. 33 of the defendant, Evansville-Vanderburgh Airport Authority District, upon enplaning air passengers:

- a. persons using the airport facilities after arrival at the airport upon commercial aircraft;
- b. persons using the airport facilities and services upon arrival or departure from Dress Memorial Airport by means of noncommercial or nonscheduled aircraft (persons in this category may not ordinarily use the Main Terminal facilities upon arrival or departure but may do so to make use of service facilities located in the Main Terminal Building such as the restaurant, bar, barber shop, taxi stands, car rental stands, etc.);
- c. persons and corporations using the airport facilities to transport and receive air freight shipments;
- d. persons using airport facilities when meeting or seeing off air passengers;
- e. persons using the airport facilities for entertainment purposes and observing the arrival or departure of aircraft;
- f. persons using the airport facilities incidental to the use of dining and bar facilities and other public facilities and services located at said airport; and
- g. other persons making use of the airport facilities who are not departing from said airport.

21. In addition to the sale of tickets for departure (enplanement) from Dress Memorial Airport by plaintiff airlines at their Evansville, Indiana offices, a substantial number of airline tickets for departure from Dress Memorial Airport are sold by the following persons or corporations:

- a. plaintiff airlines through offices in Evansville, Indiana;
- b. plaintiff airlines through offices located in every state in the United States and other locations outside the United States;
- c. other air carriers through offices located in every state in the United States and locations outside the United States;
- d. travel agency offices located in every state in the United States and localities outside the United States;
- e. private persons and corporations located in every state in the United States and locations outside the United States who are authorized to write tickets upon plaintiff airlines.

22. Because many airline tickets for departures from Dress Memorial Airport are sold by persons and corporations other than the plaintiff airlines, the only effective and practical method by which the plaintiff airlines can be assured that every person boarding one of their aircraft at Dress Memorial Airport pays the \$1.00 charge imposed by Ordinance No. 33 is to publish said charge as part of or in addition to their tariffs and rates for departure from Dress Memorial Airport. Plaintiff airlines would incur costs and expenses in effecting tariff charges and providing nationwide

accounting and remittance procedures. The costs and expenses of effecting and operating said changes and procedures might or might not exceed the six percent (6%) collection fee permitted the air carriers under Ordinance No. 33.

23. Notwithstanding the name given to the \$1.00 charge imposed by Ordinance No. 33 nor the stated justification for the charge, the operating incidence of the charge is solely the act of enplaning upon a commercial airline at Dress Memorial Airport.

24. An air passenger intending to depart Dress Memorial Airport upon a commercial airline who purchased a ticket and paid the \$1.00 charge imposed by Ordinance No. 33 but who did not enplane would not be subject to the \$1.00 charge and would be entitled to a refund thereof. Persons arriving at Dress Memorial Airport from some other locality using a round trip ticket written at that other locality would be subject to the payment of the \$1.00 charge upon departure from Dress Memorial Airport regardless of the length of time between their arrival at Dress Memorial Airport and their departure therefrom; said \$1.00 charge would be paid at the time the round trip ticket is purchased.

25. A person who walks straight through the Terminal Building to a waiting commercial aircraft and boards thereon would be subject to the payment of the \$1.00 charge imposed by Ordinance No. 33.

26. A person who waits several hours in the Terminal Building at Dress Memorial Airport for his commercial flight and uses various facilities and services located in the Terminal Building prior to boarding his aircraft would be subject to the payment of the \$1.00 charge.

27. A person who makes use of terminal facilities and who enplanes upon and departs by means of a private aircraft at Dress Memorial Airport would not be subject to the payment of the \$1.00 charge imposed by Ordinance No. 33.

28. The Court takes judicial notice of the Federal Aviation Act codified at 49 U.S.C. Section 1301, et seq. and of the congressional intention therein expressed to regulate this country's air transportation system and to provide for a uniform system of rates and charges for commercial air transportation in the United States.

29. The Court takes judicial notice of Burns' Ind. Ann. Stats. (1964 Repl.), Section 14-1234 which imposes criminal penalties upon any person who fails to comply with an ordinance enacted by the Evansville-Vanderburgh Airport Authority District.

30. The Court takes judicial notice that most persons who might desire to contest the validity and constitutionality of the \$1.00 charge imposed by Ordinance No. 33 would be deterred therefrom because of the substantial litigation costs incident to the prosecution of a lawsuit of this type.

31. The plaintiff airlines and their employees would be subject to the criminal penalties imposed by Burns' Ind. Ann. Stats. (1964 Repl.) Section 14-1234 if they fail to collect the \$1.00 charge imposed by Ordinance No. 33 or otherwise fail to comply with the terms of Ordinance No. 33.

32. If a person holding a valid air ticket refuses to pay the \$1.00 charge for enplaning at Dress Memorial Airport, the plaintiff airlines have two alternatives. They can enplane said person and pay the charge them-

selves, or they can refuse to enplane said person in which case they could become subject to penal and civil sanctions prosecuted by the passenger or appropriate federal agencies under whose jurisdiction the airlines are subject.

33. Each of the plaintiff airlines has a direct interest in the subject matter of this lawsuit for the reason that each of their leases with the defendant Evansville-Vanderburgh Airport Authority District provides that the plaintiff Airlines, in consideration of rental, are granted the use of all facilities at Dress Memorial Airport for their passengers and guests and that the Evansville-Vanderburgh Airport Authority District will not impose any additional charge upon plaintiff airlines or their passengers for use of said facilities at Dress Memorial Airport.

34. The plaintiff airlines have an additional direct interest in the subject matter of this lawsuit for the reason that they are designated as collection agents of the \$1.00 charge imposed by Ordinance No. 33 and would, if said charge is invalid or unconstitutional be subject to numerous lawsuits for a refund of the charge collected by said Ordinance No. 33.

35. The plaintiff airlines have a direct interest in this lawsuit and will be directly and adversely affected by the imposition of Ordinance No. 33 because of their designation as collection agents for the charge imposed by the Ordinance and the resulting necessity to give nationwide notice to all sellers of their airline tickets and to set up appropriate accounting and remittance procedures, all of which will result in substantial expenditures.

36. Each of the plaintiff airlines has employees stationed at Dress Memorial Airport who travel both in

intrastate and interstate commerce by air on airline business. The transportation costs for said trips are paid by plaintiff airlines, and the plaintiff airlines would directly pay or reimburse their employees for the \$1.00 charge required by Ordinance No. 33 which would be imposed on the enplanement of their employees as passengers on commercial airlines for business trips for plaintiff airlines.

37. The \$1.00 charge imposed by Ordinance No. 33 is imposed in a discriminatory manner in that said charge bears no reasonable relationship with actual use or nonuse of facilities at Dress Memorial Airport and in that a majority of the users of facilities at Dress Memorial Airport are not subject to the payment of any equivalent charge for their use of facilities.

38. The \$1.00 charge imposed by Ordinance No. 33 does not otherwise have any valid or reasonable basis for its imposition only upon enplaning passengers upon commercial aircraft. With respect to persons traveling in interstate commerce, said charge is, in reality, a condition of departure from Dress Memorial Airport into interstate commerce.

39. The actual use of airport facilities by said class of enplaning air passengers is no different from use of airport facilities by other classes of persons not subject to the payment of said \$1.00 charge. The classes of persons who use airport facilities but who are not subject to the payment of the \$1.00 charge constitute a majority of users of facilities at Dress Memorial Airport.

40. All persons, including enplaning air passengers, using facilities at Dress Memorial Airport directly or

indirectly pay some type of use charge which is remitted to the defendant Evansville-Vanderburgh Airport Authority District for the use of various facilities and services at Dress Memorial Airport. Use of commercial service facilities at Dress Memorial Airport such as the restaurant, bar, and car rental agencies produce revenue for the Evansville-Vanderburgh Airport Authority District measured by the amount of use as reflected in gross income receipts of said service facility. Likewise, the use of runways, taxiways, landing aids and other similar facilities and devices by aircraft using Dress Memorial Airport is compensated for according to use by the imposition of landing fees and other charges. Enplaning air passengers do not make use of any significant facilities or services at Dress Memorial Airport which are not also used by a numerically larger group of other persons who are not subject to the payment of the \$1.00 charge imposed by Ordinance No. 33.

41. Some persons intending to enplane at Dress Memorial Airport might be deterred therefrom because of the payment of said \$1.00 charge imposed by Ordinance No. 33.

42. An air enplaning charge which, from practical necessity, is required to be collected at the time an air ticket is purchased regardless of the location of sale, would impose a substantial and direct burden upon interstate air commerce in the United States. The necessary accounting and remittance procedures as well as the necessary notice of the charge to every vendor of plaintiff airlines' tickets in the United States would impose a heavy burden upon the interstate air commerce conducted by plaintiff airlines to the detriment of their business, with resulting adverse affect upon

air commerce in the United States. In addition, the requirement of an additional charge for the act of enplaning, which charge has no valid or reasonable basis in fact but is, in reality, a per capita tax imposed upon the act of enplaning, constitutes a direct and substantial burden upon interstate air commerce by requiring the direct payment by interstate air passengers of an additional charge for air travel in the United States.

43. If many or all commercial airports in the United States created enplaning charges similar to the one imposed by Ordinance No. 33, but without any uniformity as to amount, interstate air commerce in the United States would be burdened to such an extent as to seriously impede and restrain air commerce among the various states.

## CONCLUSIONS OF LAW

Upon the foregoing facts the Court concludes:

1. The law is with the plaintiffs.
2. Plaintiff William F. Wood is properly representative of the class in behalf of which he sues, and he has standing to maintain this action.
3. Each of the plaintiff airlines has standing to bring this lawsuit.
4. The \$1.00 charge imposed by Ordinance No. 33 upon passengers enplaning upon commercial aircraft at Dress Memorial Airport, not being related to or apportioned according to the use of facilities at Dress Memorial Airport, constitutes an unreasonable burden upon interstate commerce in the United States.
5. The \$1.00 charge imposed by Ordinance No. 33 is invalid as an intrusion by the defendant Evansville-Vanderburgh Airport Authority District upon the exclusive power of the Federal Government to regulate those aspects of interstate commerce requiring uniform national regulations.
6. The burden imposed on interstate commerce by the said \$1.00 charge required by Ordinance No. 33 is not authorized by the laws of the United States and is unlawful and unconstitutional under Article I, Section 8, Clause 3, of the Constitution of the United States.
7. The imposition of the \$1.00 charge required by Ordinance No. 33 constitutes an invalid and unlawful interference with and restraint upon the air passenger's right of freedom to travel in interstate commerce in the United States. This is especially true when con-

templation is given to similar ordinances throughout the United States with varying levels of charges.

8. The \$1.00 charge imposed by Ordinance No. 33 is unlawful and unconstitutional under the Privileges and Immunities Clause of Amendment Fourteen of the United States Constitution.

9. The singling out of enplaning air passengers as a class upon whom the \$1.00 charge of Ordinance No. 33 is imposed is a wholly arbitrary and unreasonable classification which is unjustified by the undisputed and stipulated evidence in the case.

10. By reason of the discriminatory application of the \$1.00 charge imposed by Ordinance No. 33 upon enplaning air passengers who constitute a minority class of users of airport facilities at Dress Memorial Airport, the aforesaid charge is unlawful and unconstitutional under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

11. In addition, the discriminatory imposition of said \$1.00 charge is unlawful and unconstitutional under Article I, Section 23 of the Constitution of the State of Indiana.

12. To the extent that the aforesaid \$1.00 charge imposed by Ordinance No. 33 is asserted to be a service charge, the discriminatory application thereof, as established by the evidence in this cause, is without statutory legal authorization and is therefore an invalid and ultra vires act of the defendant Evansville-Vanderburgh Airport Authority District.

13. Plaintiffs have no adequate remedy at law.

14. If Ordinance No. 33 is enforced during the pen-

deney of this matter, plaintiffs would be exposed to greater legal harm than the defendants would be by the continuance in full force and effect of an injunction restraining the enforcement of Ordinance No. 33.

15. The legal issues raised by plaintiffs herein are of a substantial nature and warrant intervention by a court of equity to preserve the status quo pending final determination of the legal issues herein raised.

16. A temporary injunction should issue restraining and enjoining the named defendants and all employees and agents of the defendants from:

- a. Implementing the execution of said Ordinance No. 33 and from taking any steps to enforce the provisions of said Ordinance in any manner;
- b. Requiring, compelling, demanding, or otherwise requesting that plaintiff airlines, and their employees and agents, make any collection of the charges imposed by said Ordinance No. 33 and from otherwise taking any action or causing any action to be taken against plaintiff airlines, and their employees and agents, inconsistent with the order of this Court that said Ordinance No. 33 not be enforced;
- c. Instituting or causing to be instituted any criminal proceedings against plaintiff airlines, or their employees and agents for the noncollection of the charges imposed by said Ordinance No. 33;
- d. Otherwise taking any action, because of the noncollection of said charges imposed by Ordinance No. 33, direct or indirect, which would in any manner interfere with the operation by plaintiff airlines of their businessess;
- e. Requiring, compelling, demanding, or otherwise

requesting, directly or indirectly, that any air passengers departing from Dress Memorial Airport make payment of the charges imposed by said Ordinance No. 33; from otherwise taking any action or causing any action to be taken against any air passenger inconsistent with the order of this Court that said Ordinance No. 33 not be enforced; and from taking any action whatsoever because of the nonpayment of said charges imposed by Ordinance No. 33, direct or indirect, which would in any manner interfere with the use of the airport facilities by said passengers and their departures from Dress Memorial Airport.

/s/ Benjamin E. Buente  
Benjamin E. Buente  
Judge, Superior Court of  
Vanderburgh County

DATED: February 17, 1969

**DEFENDANTS' ANSWER TO PLAINTIFFS'  
COMPLAINT FOR INJUNCTION IN THE  
VANDERBURGH SUPERIOR COURT  
(R. 365)**

(Title Omitted in Printing)

**PARAGRAPH I OF ANSWER**

Come now the defendants and for answer to Paragraph I of plaintiffs' complaint, allege and say:

1. Defendants admit the allegations contained in rhetorical paragraph 1 of Paragraph I of plaintiffs' complaint.
2. Defendants admit the allegations contained in rhetorical paragraph 2 of Paragraph I of plaintiffs' complaint.
3. Defendants admit the allegations contained in rhetorical paragraph 3 of Paragraph I of plaintiffs' complaint.
4. Defendants deny the allegations contained in rhetorical paragraph 4 of Paragraph I of plaintiffs' complaint.
5. Defendants admit the allegations contained in rhetorical paragraph 5 of Paragraph I of plaintiffs' complaint.
6. Defendants admit the allegations contained in rhetorical paragraph 6 of Paragraph I of plaintiffs' complaint.
7. Defendants admit the allegations contained in rhetorical paragraph 7 of Paragraph I of plaintiffs' complaint.
8. Defendants admit the allegations contained in rhetorical paragraph 8 of Paragraph I of plaintiffs' complaint.
9. Defendants admit the allegations contained in

rhetorical paragraph 9 of Paragraph I of plaintiffs' complaint.

10. Defendants admit the allegations contained in rhetorical paragraph 10 of Paragraph I of plaintiffs' complaint.

11. Defendants admit that each of the plaintiff airlines is a commercial air carrier transporting passengers and commodities in interstate commerce, but defendants specifically deny that plaintiffs' engagement in interstate commerce exists solely by virtue of the authority granted to them by the Civil Aeronautics Board with respect to commercial air carrier transporting between Dress Memorial Airport and various other locations within and without the State of Indiana.

12. Defendants admit the allegations contained in rhetorical paragraph 12 of Paragraph I of plaintiffs' complaint.

13. Defendants admit the allegations contained in rhetorical paragraph 13 of Paragraph I of plaintiffs' complaint.

14. Defendants admit the allegations contained in rhetorical paragraph 14 of Paragraph I of plaintiffs' complaint.

15. Defendants admit the allegations contained in rhetorical paragraph 15 of Paragraph I of plaintiffs' complaint.

16. Defendants admit the allegations contained in rhetorical paragraph 16 of Paragraph I of plaintiffs' complaint.

17. Defendants admit the allegations contained in rhetorical paragraph 17 of Paragraph I of plaintiffs'

complaint, but assert, in connection therewith, that Dress Memorial Airport and its facilities are primarily maintained for the benefit of commercial airline passengers and that, while statistics may be maintained for the purpose of showing the number of enplaning air passengers as opposed to deplaning passengers at Dress Memorial Airport, such statistics do not reveal that such passengers constitute the same class of persons.

18. Defendants admit the allegations contained in rhetorical paragraph 18 of Paragraph I of plaintiffs' complaint.

20. While the defendants admit the allegations contained in rhetorical paragraph 20 of Paragraph I of plaintiffs' complaint, defendants would show unto the Court that the collection of said use and service charge established by Ordinance No. 33 and directing the plaintiff airlines, together with their agents and employees, with the responsibility of collecting the same, is no different than the collection of air tariff charges imposed by the plaintiff airlines or excise taxes imposed by the United States Government.

21. Defendants admit that the use and service charge of One Dollar (\$1.00) is imposed only upon enplaning passengers at Dress Memorial Airport as defined by Ordinance No. 33.

22. Defendants deny the allegations contained in rhetorical paragraph 22 of Paragraph I of plaintiffs' complaint.

23. Defendants admit the allegations contained in rhetorical paragraph 23 of Paragraph 5 of plaintiffs' complaint.

24. Defendants deny the allegations contained in

rhetorical paragraph 24 of Paragraph I of plaintiffs' complaint.

25. Defendants deny the allegations contained in rhetorical paragraph 25 of Paragraph I of plaintiffs' complaint.

26. Defendants deny the allegations contained in rhetorical paragraph 26 of Paragraph I of plaintiffs' complaint.

27. Defendants deny the allegations contained in rhetorical paragraph 27 of Paragraph I of plaintiffs' complaint.

28. Defendants deny the allegations contained in rhetorical paragraph 28 of Paragraph I of plaintiffs' complaint.

29. Defendants deny the allegations contained in rhetorical paragraph 29 of Paragraph I of plaintiffs' complaint.

30. Defendants deny the allegations contained in rhetorical paragraph 30 of Paragraph I of plaintiffs' complaint.

31. Defendants deny the allegations contained in rhetorical paragraph 31 of Paragraph I of plaintiffs' complaint.

32. Defendants deny the allegations contained in rhetorical paragraph 32 of Paragraph I of plaintiffs' complaint.

33. Defendants deny that the written undertaking of the plaintiffs in this cause of action is sufficient to recompense the defendants for any loss, expenses or damage caused by the issuance by this Court of a restraining order or injunction.

WHEREFORE, defendants pray that the Court declare Ordinance No. 33 valid and constitutional; that plaintiffs take nothing by their complaint; that plaintiffs be required, further, to compensate the defendants for all losses, expenses and damages occasioned to the defendants by reason of the issuance of the restraining order and temporary injunction herein; that the restraining order and temporary injunction heretofore issued in this cause of action be dissolved; for the costs of this action and all other just and proper relief in the premises.

NEWMAN, TROCKMAN & FLYNN  
/s/ Howard P. Trockman  
Howard P. Trockman  
*Attorney for Defendants*

#### PARAGRAPH II OF ANSWER

Come now the defendants and for answer to Paragraph II of plaintiffs' complaint, allege and say:

1. Defendants hereby adopt, re-allege and incorporate by reference the respective answers of said defendants to rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of Paragraph I of their answers as though fully written and contained herein.

2. Defendants deny the allegations contained in rhetorical paragraph 2 of Paragraph II of plaintiffs' complaint.

3. Defendants deny the allegations contained in rhetorical paragraph 3 of Paragraph II of plaintiffs' complaint.

4. Defendants deny the allegations contained in rhetorical paragraph 4 of Paragraph II of plaintiffs' complaint.

5. Defendants deny the allegations contained in rhetorical paragraph 5 of Paragraph II of plaintiffs' complaint.

6. Defendants deny the allegations contained in rhetorical paragraph 6 of Paragraph II of plaintiffs' complaint.

7. Defendants deny the allegations contained in rhetorical paragraph 7 of Paragraph II of plaintiffs' complaint.

8. Defendants deny the allegations contained in rhetorical paragraph 8 of Paragraph II of plaintiffs' complaint.

9. Defendants deny the allegations contained in rhetorical paragraph 9 of Paragraph II of plaintiffs' complaint.

10. Defendants deny the allegations contained in rhetorical paragraph 10 of Paragraph II of plaintiffs' complaint.

11. Defendants deny that the written undertaking of the plaintiffs in this cause of action is sufficient to recompense the defendants for any loss, expenses or damage caused by the issuance by this Court of a restraining order or injunction.

WHEREFORE, defendants pray that the Court declare Ordinance No. 33 valid and constitutional; that plaintiffs take nothing by their complaint; that plaintiffs be required, further, to compensate the defendants for all losses, expenses and damages occasioned

to the defendants by reason of the issuance of the restraining order and temporary injunction herein; that the restraining order and temporary injunction heretofore issued in this cause of action be dissolved; for the costs of this action and all other just and proper relief in the premises.

NEWMAN, TROCKMAN & FLYNN

/s/ Howard P. Trockman

Howard P. Trockman

*Attorney for Defendants.*

### PARAGRAPH III OF ANSWERS

Come now the defendants and for answer to Paragraph III of plaintiffs' complaint, allege and say:

1. Defendants hereby adopt, reallege and incorporate by reference the respective answers of said defendants to rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of Paragraph I of their answers as though fully written and contained herein.
2. Defendants deny the allegations contained in rhetorical paragraph 2 of Paragraph III of plaintiffs' complaint.
3. Defendants deny the allegations contained in rhetorical paragraph 3 of Paragraph III of plaintiffs' complaint.
4. Defendants deny the allegations contained in rhetorical paragraph 4 of Paragraph III of plaintiffs' complaint.
5. Defendants deny the allegations contained in

rhetorical paragraph 5 of Paragraph III of plaintiffs' complaint.

6. Defendants deny the allegations contained in rhetorical paragraph 6 of Paragraph III of plaintiffs' complaint.

7. Defendants deny the allegations contained in rhetorical paragraph 7 of Paragraph III of plaintiffs' complaint.

8. Defendants deny that the written undertaking of the plaintiffs in this cause of action is sufficient to recompense the defendants for any loss, expenses or damage caused by the issuance by this Court of a restraining order or injunction.

WHEREFORE, defendants pray that the Court declare Ordinance No. 33 valid and constitutional; that plaintiffs take nothing by their complaint; that plaintiffs be required, further, to compensate the defendants for all losses, expenses and damages occasioned to the defendants by reason of the issuance of the restraining order and temporary injunction herein; that the restraining order and temporary injunction heretofore issued in this cause of action be dissolved; for the costs of this action and all other just and proper relief in the premises.

NEWMAN, TROCKMAN & FLYNN

/s/ Howard P. Trockman

Howard P. Trockman

Attorney for Defendants

**PARAGRAPH IV OF ANSWER**

Come now the defendants and for answer to Paragraph IV of plaintiffs' complaint, allege and say:

1. Defendants hereby adopt, reallege and incorporate by reference the respective answers of said defendants to rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of Paragraph I of their answers as though fully written and contained herein.
2. Defendants deny the allegations contained in rhetorical paragraph 2 of Paragraph IV of plaintiffs' complaint.
3. Defendants deny the allegations contained in rhetorical paragraph 3 of Paragraph IV of plaintiffs' complaint.
4. Defendants deny the allegations contained in rhetorical paragraph 4 of Paragraph IV of plaintiffs' complaint.
5. Defendants deny the allegations contained in rhetorical paragraph 5 of Paragraph IV of plaintiffs' complaint.
6. Defendants deny the allegations contained in rhetorical paragraph 6 of Paragraph IV of plaintiffs' complaint.
7. Defendants deny the allegations contained in rhetorical paragraph 7 of Paragraph IV of plaintiffs' complaint.
8. Defendants deny the allegations contained in rhetorical paragraph 8 of Paragraph IV of plaintiffs' complaint.

9. Defendants deny the allegations contained in rhetorical paragraph 9 of Paragraph IV of plaintiff's complaint.

10. Defendants deny the allegations contained in rhetorical paragraph 10 of Paragraph IV of plaintiffs' complaint.

11. Defendants deny the allegations contained in rhetorical paragraph 11 of Paragraph IV of plaintiffs' complaint.

12. Defendants deny that the written undertaking of the plaintiffs in this cause of action is sufficient to recompense the defendants for any loss, expenses or damage caused by the issuance by this Court of a restraining order or injunction.

WHEREFORE, defendants pray that the Court declare Ordinance No. 33 valid and constitutional; that plaintiffs take nothing by their complaint; that plaintiffs be required, further, to compensate the defendants for all losses, expenses and damages occasioned to the defendant by reason of the issuance of the restraining order and temporary injunction herein; that the restraining order and temporary injunction heretofore issued in this cause of action be dissolved; for the costs of this action and all other just and proper relief in the premises.

NEWMAN, TROCKMAN & FLYNN

/s/ Howard P. Trockman

Howard P. Trockman

*Attorney for Defendants*

(Certificate of Service Omitted in Printing)

**DEFENDANTS' ANSWER TO INTERVENOR  
WOODS' COMPLAINT FOR INJUNCTION IN  
THE VANDERBURGH SUPERIOR COURT**

**(R. 357)**

**ANSWER TO INTERVENING COMPLAINT OF  
WILLIAM F. WOOD FOR TEMPORARY IN-  
JUNCTION AND PERMANENT INJUNCTION**

## PARAGRAPH I OF ANSWER

Come now the defendants and for answer to Paragraph I of plaintiff, William F. Wood's, intervening complaint for temporary injunction and permanent injunction, allege and say:

1. Defendants admit the allegations contained in rhetorical paragraph 1 of Paragraph I of plaintiffs' complaint.
2. The defendants are without information as to the allegations contained in rhetorical paragraph 2 of Paragraph I of said plaintiff's intervening complaint.
3. Defendants admit the allegations contained in rhetorical paragraph 3 of Paragraph I of plaintiffs' complaint.
4. Defendants admit the allegations contained in rhetorical paragraph 4 of Paragraph I of plaintiffs' complaint.
5. Defendants admit the allegations contained in rhetorical paragraph 5 of Paragraph I of plaintiff's complaint.
6. Defendants admit the allegations contained in rhetorical paragraph 6 of Paragraph I of plaintiff's complaint.
7. Defendants admit the allegations contained in rhetorical paragraph 7 of Paragraph I of plaintiffs' complaint.
8. Defendants admit the allegations contained in rhetorical paragraph 8 of Paragraph I of plaintiffs' complaint.
9. Defendants admit the allegations contained in

rhetorical paragraph 9 of Paragraph I of plaintiffs' complaint.

10. Defendants admit the allegations contained in rhetorical paragraph 10 of Paragraph I of plaintiffs' complaint.

11. Defendants admit the allegations contained in rhetorical paragraph 11 of Paragraph I of plaintiffs' complaint, but assert, in connection therewith, that Dress Memorial Airport and its facilities are primarily maintained for the benefit of commercial airline passengers and that, while statistics may be maintained for the purpose of showing the number of enplaning air passengers as opposed to deplaning passengers at Dress Memorial Airport, such statistics do not reveal that such passengers constitute the same class of persons.

12. Defendants admit the allegations contained in rhetorical paragraph 12 of Paragraph I of plaintiffs' complaint.

13. Defendants admit the allegations contained in rhetorical paragraph 13 of Paragraph I of plaintiff's complaint.

14. While the defendants admit the allegations contained in rhetorical paragraph 14 of Paragraph I of plaintiff's complaint, defendants would show unto the Court that the collection of said use and service charge established by Ordinance No. 33 and directing the plaintiff airlines, together with their agents and employees, with the responsibility of collecting the same, is no different than the collection of air tariff charges imposed by the plaintiff airlines or excise taxes imposed by the United States Government.

15. Defendants admit that the use and service charge of One Dollar (\$1.00) is imposed only upon enplaning passengers at Dress Memorial Airport as defined by Ordinance No. 33.

16. While defendants admit that the questions presented in this lawsuit are those of common and general interest of many persons who will or may be subject to the use and service charge of One Dollar (\$1.00) as alleged in rhetorical paragraph 16 of Paragraph I of said plaintiff's intervening complaint, defendants deny that said intervening plaintiff represents that class of enplaning air passengers as plaintiffs in this cause of action and said defendants further deny that said class of enplaning passengers are those who would be interested as parties to this lawsuit.

17. Defendants deny the allegations contained in rhetorical paragraph 17 of Paragraph I of plaintiff's complaint.

18. Defendants deny the allegations contained in rhetorical paragraph 19 of Paragraph I of plaintiff's complaint.

19. Defendants deny the allegations contained in rhetorical paragraph 18 of Paragraph I of plaintiff's complaint.

20. Defendants deny the allegations contained in rhetorical paragraph 20 of Paragraph I of plaintiff's complaint.

21. Defendants deny the allegations contained in rhetorical paragraph 21 of Paragraph I of plaintiff's complaint.

22. Defendants deny the allegations contained in

rhetorical paragraph 22 of Paragraph I of plaintiff's complaint.

23. Defendants deny that the written undertaking of the plaintiff in this cause of action is sufficient to recompense the defendants for any loss, expenses or damage caused by the issuance by this Court of a restraining order or injunction.

WHEREFORE, defendants pray that the Court declare Ordinance No. 33 valid and constitutional; that plaintiff take nothing by his complaint; that plaintiff be required, further, to compensate the defendants for all losses, expenses and damages occasioned to the defendants by reason of the issuance of the restraining order and temporary injunction herein; that the restraining order and temporary injunction heretofore issued in this cause of action be dissolved; for the costs of this action, and all other just and proper relief in the premises.

NEWMAN, TROCKMAN & FLYNN

/s/ Howard P. Trockman

Howard P. Trockman

Attorney for Defendants

## PARAGRAPH II OF ANSWER

Come now the defendants and for answer to Paragraph II of plaintiff, William F. Wood's, intervening complaint for temporary injunction and permanent injunction, allege and say:

1. Defendants hereby adopt, reallege and incorporate by reference the respective answers of said defendants to rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Paragraph I of their answers as though fully written and contained herein.

2. Defendants deny the allegations contained in rhetorical paragraph 2 of Paragraph II of plaintiff's complaint.
3. Defendants deny the allegations contained in rhetorical paragraph 3 of Paragraph II of plaintiff's complaint.
4. Defendants deny the allegations contained in rhetorical paragraph 4 of Paragraph II of plaintiff's complaint.
5. Defendants deny the allegations contained in rhetorical paragraph 5 of Paragraph II of plaintiff's complaint.
6. Defendants deny the allegations contained in rhetorical paragraph 6 of Paragraph II of plaintiff's complaint.
7. Defendants deny the allegations contained in rhetorical paragraph 7 of Paragraph II of plaintiff's complaint.
8. Defendants deny that the written undertaking of the plaintiff in this cause of action is sufficient to recompense the defendants for any loss, expenses or damage caused by the issuance by this Court of a restraining order or injunction.

WHEREFORE, defendants pray that the Court declare Ordinance No. 33 valid and constitutional; that plaintiff take nothing by his complaint; that plaintiff be required, further, to compensate the defendants for all losses, expenses and damages occasioned to the defendants by reason of the issuance of the restraining order and temporary injunction herein; that the restraining order and temporary injunction heretofore issued in this cause of action be dissolved; for the

costs of this action and all other just and proper relief in the premises.

NEWMAN, TROCKMAN & FLYNN  
/s/ Howard P. Trockman  
Howard P. Trockman  
Attorneys for Defendants

### PARAGRAPH III OF ANSWER

Come now the defendants and for answer to Paragraph III of plaintiff, William F. Wood's, intervening complaint for temporary injunction and permanent injunction, allege and say:

1. Defendants hereby adopt, reallege and incorporate by reference the respective answers of said defendants to rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Paragraph I of their answers as though fully written and contained herein.
2. Defendants deny the allegations contained in rhetorical paragraph 2 of Paragraph III of plaintiff's complaint.
3. Defendants deny the allegations contained in rhetorical paragraph 3 of Paragraph II of plaintiff's complaint.
4. Defendants deny the allegations contained in rhetorical paragraph 4 of Paragraph II of plaintiff's complaint.
5. Defendants deny the allegations contained in rhetorical paragraph 5 of Paragraph III of plaintiff's complaint.
6. Defendants deny the allegations contained in

rhetorical paragraph 6 of Paragraph III of plaintiff's complaint.

7. Defendants deny that the written undertaking of the plaintiff in this cause of action is sufficient to recompense the defendants for any loss, expenses or damage caused by the issuance by this Court of a restraining order or injunction.

WHEREFORE, defendants pray that the Court declare Ordinance No. 33 valid and constitutional; that plaintiff take nothing by his complaint; that plaintiff be required, further, to compensate the defendants for all losses, expenses and damages occasioned to the defendants by reason of the issuance of the restraining order and temporary injunction herein; that the restraining order and temporary injunction heretofore issued in this cause of action be dissolved; for the costs of this action and all other just and proper relief in the premises.

NEWMAN, TROCKMAN & FLYNN

/s/ Howard P. Trockman

Howard P. Trockman

Attorneys for Defendants

#### PARAGRAPH IV OF ANSWER

Come now the defendants and for answer to Paragraph IV of plaintiff, William F. Wood's, intervening complaint for temporary injunction and permanent injunction, allege and say:

1. Defendants hereby adopt, reallege and incorporate by reference the respective answers of said defendants to rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8,

9, 10, 11, 12, 13, 14, 15 and 16 of Paragraph I of their answers as though fully written and contained herein.

2. Defendants deny the allegations contained in rhetorical paragraph 2 of Paragraph IV of plaintiff's complaint.

3. Defendants deny the allegations contained in rhetorical paragraph 3 of Paragraph IV of plaintiff's complaint.

4. Defendants deny the allegations contained in rhetorical paragraph 4 of Paragraph IV of plaintiff's complaint.

5. Defendants deny the allegations contained in rhetorical paragraph 5 of Paragraph IV of plaintiff's complaint.

6. Defendants deny the allegations contained in rhetorical paragraph 6 of Paragraph IV of plaintiff's complaint.

7. Defendants deny the allegations contained in rhetorical paragraph 7 of Paragraph IV of plaintiff's complaint.

8. Defendants deny the allegations contained in rhetorical paragraph 8 of Paragraph IV of plaintiff's complaint.

9. Defendants deny the allegations contained in rhetorical paragraph 9 of Paragraph IV of plaintiff's complaint.

10. Defendants deny the allegations contained in rhetorical paragraph 10 of Paragraph IV of plaintiff's complaint.

11. Defendants deny that the written undertaking of the plaintiff in this cause of action is sufficient to

recompense the defendants for any loss, expenses or damage caused by the issuance by this Court of a restraining order or injunction.

WHEREFORE, defendants pray that the Court declare Ordinance No. 33 valid and constitutional; that plaintiff take nothing by his complaint; that plaintiff be required, further, to compensate the defendants for all losses, expenses and damages occasioned to the defendants by reason of the issuance of the restraining order and temporary injunction herein; that the restraining order and temporary injunction heretofore issued in this cause of action be dissolved; for the costs of this action and all other just and proper relief in the premises.

NEWMAN, TROCKMAN & FLYNN  
/s/ Howard P. Trockman  
Howard P. Trockman  
*Attorneys for Defendants*

(Certificate of Service Omitted in Printing)

**DEFENDANTS' COUNTERCLAIM AGAINST  
PLAINTIFFS IN THE VANDERBURGH  
SUPERIOR COURT**

**(R. 353)**

(Title Omitted in Printing)

**COUNTERCLAIM**

Comes now the defendant, Evansville-Vanderburgh Airport Authority District, and for counterclaim and cause of action against the plaintiffs, Delta Air Lines, Inc., Eastern Airlines, and Allegheny Airlines, Inc., alleges and says:

1. The defendant and counterclaimant, Evansville-Vanderburgh Airport Authority District, is the owner and operator of Dress Memorial Airport located in Evansville, Vanderburgh County, State of Indiana, said defendant being an Airport Authority District created by the Acts of the Indiana General Assembly, 1959, together with amendments thereto and other legislative amendments referred to therein, and being empowered and authorized thereunder to, among other things, enact ordinances for the purpose of adopting a schedule of rates and charges and to collect the same from users of facilities and services located at said Airport and, further, to fix, charge and collect rentals, tolls, fees and charges to be paid for the use of the whole or any part or parts of said Airport and to fix, charge and collect fees for privileges thereon.

2. Pursuant to said statutory authority, the defendant and counterclaimant, on February 26, 1968, by and through its Board of Directors, duly enacted and adopted an ordinance, known as Ordinance No. 33, which establishes a use and service charge of One Dollar (\$1.00) for each enplaning commercial air passenger at Dress Memorial Airport, as said term is defined by said Ordinance, and further directs the plaintiff airlines, together with their agents, servants and employees, to collect and remit the same, after deducting

six percent (6%) of all such amounts collected for the purpose of paying for the costs incurred by the plaintiff airlines in the collection of said use and service charge. A true copy of said Ordinance has been attached to plaintiffs' complaint and marked "Exhibit A."

3. Said Ordinance No. 33 was to take effect on July 1, 1968, but on said date, plaintiffs obtained a restraining order and, subsequently, a temporary injunction which wrongfully precludes the defendant from the proceeds which were to be derived from the application and enforcement of said Ordinance.

4. During the year 1967, there were 146,955 enplaning passengers at Dress Memorial Airport and, the number of enplaning passengers during the year 1968 and to the date of the filing of this counterclaim in the year 1969 has exceeded the monthly average of enplaning passengers during the year 1967. It is reasonably anticipated that, for the year 1969, the number of enplaning passengers at Dress Memorial Airport will approximate the sum of 175,000.

5. Plaintiffs' complaint is improperly brought, unfounded and without merit, said Ordinance No. 33 being a valid and constitutional use and service charge for enplaning passengers at Dress Memorial Airport, said Ordinance being only designed to defray, partially, the costs of maintaining facilities at Dress Memorial Airport for the comfort, convenience and safety of commercial airlines and their passengers.

6. The defendant, Evansville-Vanderburgh Airport Authority District, during each day that said restraining order and temporary injunction remains in force and effect, suffers great financial losses and is de-

prived of the use of the funds designed to be raised by said Ordinance No. 33 in order to improve the facilities at Dress Memorial Airport for the comfort, safety and convenience of said commercial airline passengers. In addition to said daily financial loss, the defendant has been required to retain counsel in order to uphold the validity and constitutionality of said Ordinance for which the defendant requests reasonable compensation.

WHEREFORE, defendant prays for judgment against the plaintiffs in such an amount as will duly compensate defendant in accordance with the terms and provisions of the use and service charge established by said Ordinance No. 33, together with reimbursement for reasonable attorneys' fees and expenses incurred in connection with this proceeding, the costs of this action and all other just and proper relief in the premises.

NEWMAN, TROCKMAN & FLYNN

/s/ Howard P. Trockman

Howard P. Trockman

*Attorneys for Defendant,*

*Evansville-Vanderburgh*

*Airport Authority District*

Defendant, Evansville-Vanderburgh Airport Authority District, hereby requests a trial by jury.

NEWMAN, TROCKMAN & FLYNN

/s/ Howard P. Trockman

Howard P. Trockman

(Certificate of Service Omitted in Printing)

**PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT IN THE VANDERBURGH  
SUPERIOR COURT**

**(R. 2 384)**

(Title Omitted in Printing)

**PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT**

Come now the Plaintiffs and the intervening Plaintiff, by their attorneys Bamberger, Foreman, Oswald and Hahn and Cleary, Gottlieb, Steen and Hamilton and move this Court to enter summary judgment for the Plaintiffs and the intervening Plaintiff on the grounds that

- (1) the complaint herein and answers thereto;
- (2) the complaint of the intervening Plaintiff herein and answers thereto;
- (3) the joint stipulation of facts made and entered into by the parties hereto which, together with its exhibits, was jointly submitted to the Court herein as Joint Exhibit I for the Court's consideration on Plaintiffs' application for a temporary injunction, which stipulation and exhibits are part of the record in this cause; and
- (4) The findings of fact and conclusions of law made by this Court on February 17, 1969, and incorporated and made a part of the order of this Court dated February 21, 1969, show that the Plaintiffs and the intervening Plaintiff are entitled to judgement as a matter of law.

/s/ Fred P. Bamberger  
Fred P. Bamberger  
/ / Jeffrey R. Kinney  
Jeffrey R. Kinney

/s/ John K. Mallory, Jr.  
John K. Mallory, Jr.

/s/ Daniel B. Silver  
Daniel B. Silver

*Attorneys for Plaintiffs*

Of Counsel:

BAMBERGER, FOREMAN,  
OSWALD AND HAHN  
708 Hulman Building  
Evansville, Ind. 47708

Robert C. Barnard  
John K. Mallory, Jr.  
CLEARY, GOTTLIEB, STEEN  
AND HAMILTON  
1250 Connecticut Avenue, N.W.  
Washington, D.C. 20036

(Notice of Motion for Summary Judgment and Certificate of Service of Notice and Motion for Summary Judgment Omitted in Printing.)

**DEFENDANTS MOTION FOR  
SUMMARY JUDGMENT IN THE  
VANDERBURGH SUPERIOR COURT  
(R. 289)**

(Title Omitted in Printing)

**DEFENDANTS' MOTION FOR A SUMMARY  
JUDGMENT**

Come now all of the defendants by their attorneys, Newman, Trockman & Flynn, and move the Court to enter summary judgment for the defendants on the grounds that plaintiffs' complaint, as shown by the answer thereto and the Stipulated Facts of the parties, presents no genuine issue as to any material fact and that the defendants are entitled to a summary judgment as a matter of law.

**NEWMAN, TROCKMAN & FLYNN**

/s/ Howard P. Trockman

Howard P. Trockman

*Attorneys for Defendants*

(Notice of Motion for Summary Judgment and Certificate of Service of Notice and Motion for Summary Judgment Omitted in Printing.)

**JUDGMENT OF THE VANDERBURGH  
SUPERIOR COURT GRANTING PLAINTIFFS  
A PERMANENT INJUNCTION AGAINST  
DEFENDANTS  
(R. 391)**

COUNTY OF VANDERBURGH )  
 STATE OF INDIANA ) SS:  
 )

IN THE SUPERIOR COURT OF VANDERBURGH  
 COUNTY

1969 TERM

DELTA AIR LINES, INC. )  
 EASTERN AIRLINES, )  
 ALLEGHENY AIRLINES, INC., )  
 and WILLIAM F. WOOD, on )  
 behalf of himself and all other )  
 persons similarly situated, )

*Plaintiffs* )

vs. ) No. SC 68-328

EVANSVILLE-VANDERBURGH )  
 AIRPORT AUTHORITY DIS- )  
 TRICT, KENNETH C. KENT, )  
 ELMO HOLDER, ROBERT M. )  
 LEICH, IAN F. LOCKHART, )  
 CLIFFORD K. ARDEN, JAMES )  
 A. GEYER, and PAUL E. )  
 HATFIELD, on behalf of himself )  
 and all other persons similary )  
 situated, )

*Defendants* )

NUNC PRO TUNC JUDGMENT  
 ENTRY FOR MAY 8, 1969

Come now the Plaintiffs herein and the intervening  
 Plaintiff herein by their attorneys, Bamberger, Fore-

man, Oswald and Hahn and Cleary, Gottlieb, Steen and Hamilton, and file their joint motion for summary judgment. And come now the Defendants herein and the intervening Defendant herein by their counsel, Howard P. Trockman, of Newman, Trockman, and Flynn and file their cross-motion for summary judgment.

And now, said motion of Plaintiffs and the intervening Plaintiff and said cross-motion of Defendants and intervening Defendant having come on for hearing on the 8th day of May, 1969, and the Court having heard arguments thereon, and having considered the Plaintiffs' complaint and the answers thereto; the complaint of the intervening Plaintiff and answers thereto; the joint stipulation of facts made and entered into by the parties hereto which, together with its exhibits, was jointly submitted to the Court herein as Joint Exhibit I for the Court's consideration on Plaintiffs' application for a temporary injunction, which stipulation and exhibits are part of the record in this cause; and the findings of fact and conclusions of law made by this Court on February 17, 1969, and incorporated into and made a part of the order of this Court dated February 21, 1969, and the Court having found that the Defendant Evansville-Vanderburgh Airport Authority District has failed to plead over after a demurrer was sustained to its counterclaim filed herein on March 24, 1969, and the Court being of the opinion and so finding that no genuine issue as to any material facts exists, the Court finds that the Plaintiffs and the intervening Plaintiff are entitled to summary judgment as a matter of law and for the reasons set forth in the Conclusions of Law made by this Court on February 17, 1969, and made a part of the Order of this Court dated February 21, 1969, which

Conclusions of Law are as follows:

- a. Plaintiff William F. Wood is properly representative of the class in behalf of which he sues, and has standing to maintain this action.
- b. Each of the plaintiff airlines has standing to bring this lawsuit.
- c. The \$1.00 charge imposed by Ordinance No. 33 upon passengers enplaning upon commercial aircraft at Dress Memorial Airport, not being related to or apportioned according to the use of facilities at Dress Memorial Airport, constitutes an unreasonable burden upon interstate commerce in the United States.
- d. The \$1.00 charge imposed by Ordinance No. 33 is invalid an an intrusion by the defendant Evansville-Vanderburgh Airport Authority District upon the exclusive power of the Federal Government to regulate those aspects of interstate commerce requiring uniform national regulations.
- e. The burden imposed on interstate commerce by the said \$1.00 charge required by Ordinance No. 33 is not authorized by the laws of the United States, and is unlawful and unconstitutional under Article I, Section 8, Clause 3, of the Constitution of the United States.
- f. The imposition of the \$1.00 charge required by Ordinance No. 33 constitutes an invalid and unlawful interference with and restraint upon the air passenger's right of freedom to travel in interstate commerce in the United States. This is especially true when contemplation is given to similar ordinances throughout the United States with varying levels of charges.

- g. The \$1.00 charge imposed by Ordinance No. 33 is unlawful and unconstitutional under the Privileges and Immunities Clause of Amendment Fourteen of the United States Constitution.
- h. The singling out of enplaning air passengers as a class upon whom the \$1.00 charge of Ordinance No. 33 is imposed is wholly arbitrary and unreasonable classification which is unjustified by the undisputed and stipulated evidence in the case.
- i. By reason of the discriminatory application of the \$1.00 charge imposed by Ordinance No. 33 upon enplaning air passengers who constitute a minority class of users of airport facilities at Dress Memorial Airport, the aforesaid charge is unlawful and unconstitutional under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.
- j. In addition, the discriminatory imposition of said \$1.00 charge is unlawful and unconstitutional under Article I, Section 23 of the Constitution of the State of Indiana.
- k. To the extent that the aforesaid \$1.00 charge imposed by Ordinance No. 33 is asserted to be a service charge, the discriminatory application thereof, as established by the evidence in this cause, is without statutory legal authorization and is therefore an invalid and ultra vires act of the defendant Evansville-Vanderburgh Airport Authority District.
- 1. Plaintiffs have no adequate remedy at law. The Court finds the Plaintiffs and intervening Plaintiff are entitled to judgment perpetually enjoining the Defendants from:

- a. Implementing the execution of Ordinance No. 33 enacted by the Directors of the Evansville-Vanderburgh Airport Authority District on February 26, 1968, and from taking any steps to enforce the provisions of said Ordinance in any manner;
- b. Requiring, compelling, demanding, or otherwise requesting that Delta Air Lines, Inc., Eastern Airlines, and Allegheny Airlines, Inc., and their employees and agents, make any collection of the charges imposed by the aforesaid Ordinance No. 33 and from otherwise taking any action or causing any action to be taken against said airlines or their employees and agents, inconsistent with the order of this Court that said Ordinance No. 33 not be enforced;
- c. Instituting or causing to be instituted any criminal proceedings against the aforesaid airlines, or their employees and agents for the noncollection of the charges imposed by said Ordinance No. 33;
- d. Otherwise taking any action, because of the noncollection of said charges imposed by Ordinance No. 33, direct or indirect, which would in any manner interfere with the operation by the aforesaid airlines of their businesses;
- e. Requiring, compelling, demanding, or otherwise requesting, directly or indirectly, that any airline passengers departing from Dress Memorial Airport make payment of the charge imposed by said Ordinance No. 33; from otherwise taking any action or causing any action to be taken against any air passengers inconsistent with the order of this Court that said Ordinance No. 33 not be enforced; and from taking any action

whatsoever because of the nonpayment of said charges imposed by said Ordinance No. 33, direct or indirect, which would in any manner interfere with the use of the airport facilities by said passengers and their departures from Dress Memorial Airport.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED that the joint motion of Plaintiffs herein and the intervening Plaintiff herein for summary judgment be, and the same is, hereby granted.

IT IS FURTHER ORDERED that the cross-motion for summary judgment filed herein by the Defendants be, and the same is, hereby overruled.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED by the Court that the Defendants, Evansville-Vanderburgh Airport Authority District, Kenneth C. Kent, Elmo Holder, Robert M. Leich, Ian F. Lockhart, Clifford K. Arden, James A. Geyer and their successors and assigns be, and they are hereby, perpetually enjoined from:

- a. Implementing the execution of Ordinance No. 33 enacted by the Directors of the Evansville-Vanderburgh Airport Authority District on February 26, 1968, and from taking any steps to enforce the provisions of said Ordinance in any manner;
- b. Requiring, compelling, demanding, or otherwise requesting that Delta Airlines, Inc., Eastern Airlines, and Allegheny Airlines, Inc., and their employees and agents, make any collection of the charges imposed by the aforesaid Ordinance No. 33 and from otherwise taking any action or causing any action to be taken against said airlines or

their employees and agents, inconsistent with the order of this Court that said Ordinance No. 33 not be enforced;

- c. Instituting or causing to be instituted any criminal proceedings against the aforesaid airlines, or their employees and agents for the noncollection of the charges imposed by said Ordinance No. 33;
- d. Otherwise taking any action, because of the noncollection of said charges imposed by Ordinance No. 33, direct or indirect, which would in any manner interfere with the operation by the aforesaid airlines of their businesses.
- e. Requiring, compelling, demanding, or otherwise requesting, directly or indirectly, that any air passengers departing from Dress Memorial Airport make payment of the charges imposed by said Ordinance No. 33; from otherwise taking any action or causing any action to be taken against any air passengers inconsistent with the order of this Court that said Ordinance No. 33 not be enforced; and from taking any action whatsoever because of the nonpayment of said charges imposed by said Ordinance No. 33, direct or indirect, which would in any manner interfere with the use of the airport facilities by said passengers and their departures from Dress Memorial Airport.

The Court now enters final judgment for the Plaintiffs and intervening Plaintiff herein, and orders that the Defendants and intervening Defendant shall have ninety. (90) days from the date hereof within which to perfect appeal to the Indiana Supreme Court.

IT IS FURTHER ORDERED that the Plaintiffs herein and the intervening Plaintiff herein have judg-

ment for costs against the Defendant, Evansville-Vanderburgh Airport Authority District only but costs are hereby waived and suspended.

/s/ Benjamin E. Buente  
Benjamin E. Buente  
Judge, Superior Court of  
Vanderburgh County

**OPINION OF THE SUPREME COURT OF  
INDIANA ON APPEAL FROM THE SUPERIOR  
COURT OF VANDERBURGH COUNTY.**

IN THE  
SUPREME COURT OF INDIANA

EVANSVILLE-VANDERBURGH )  
AIRPORT AUTHORITY DIS- )  
TRICT, KENNETH C. KENT, )  
ELMO HOLDER, ROBERT M. )  
LEICH, IAN F. LOCKHART, )  
CLIFFORD K. ARDEN, JAMES )  
A. GEYER and PAUL E. )  
HATFIELD, On Behalf of Him- )  
self and All Others Persons )  
Similarly Situated, )

*Appellants,* )

v. )

No. 869 S 179

DELTA AIRLINES, INC., )  
EASTERN AIRLINES, )  
ALLEGHENY AIRLINES, )  
INC., and WILLIAM F. WOOD, )  
On Behalf of Himself and All )  
Other Persons Similarly )  
Situated, )

*Appellees.* )

---

APPEAL FROM THE SUPERIOR COURT OF  
VANDERBURGH COUNTY

Honorable Benjamin E. Buente, Judge

---

DeBRULER, J.

This is an appeal from a final judgment in the Vanderburgh County Superior Court granting appellees

a permanent injunction against the enforcement of Evansville-Vanderburgh Airport Authority District's Ordinance No. 33, which ordinance establishes a charge of \$1.00 for each passenger (with certain exceptions) enplaning a commercial aircraft at Dress Memorial Airport, Evansville, Indiana. The other appellants are either directors or officers of the appellant Airport Authority District.

On February 26, 1968, appellants enacted Ordinance No. 33, intended to become effective July 1, 1968, which levied a charge of \$1.00 on enplaning commercial air passengers at Dress Memorial Airport. The ordinance, in pertinent part, reads:

**"Section 1. Commencing on July 1, 1968, there is hereby fixed, created and established a use and service charge of One Dollar (\$1.00) for each passenger enplaning any commercial aircraft operated from the Dress Memorial Airport.**

\* \* \*

**"Section 4. The term 'each passenger enplaning any commercial aircraft operated from the Dress Memorial Airport' shall not include nor shall the use and service charge hereby created, apply to any active members of the United States Armed Forces enplaning aircraft at the Dress Memorial Airport, or any person purchasing an airline ticket having, as an initial point of departure, a locality other than Dress Memorial Airport, and whose flight either terminates or requires an intermediate or temporary stop at Dress Memorial Airport.**

**"Section 5. All revenue collected from said use and service charges shall be held by the Evansville-Vanderburgh Airport Authority District in a separate**

fund for the purpose of defraying the present and future costs incurred by said Airport Authority in the construction, improvement, equipment, and maintenance of said Airport and its facilities for the continued use and future enjoyment by all users thereof."

The appellee airlines are commercial air carriers transporting passengers, freight, express and mail to and from Dress Memorial Airport in interstate commerce under authorization of the Civil Aeronautics Board. Each of the appellee airlines leases and operates facilities at Dress Memorial Airport for the purposes of providing commercial air passenger and freight service. The appellees sought to enjoin the enforcement of Ordinance No. 33 on the grounds it was unconstitutional and illegal in several respects. In granting appellees a permanent injunction the trial court made eleven conclusions of law, but in the view we take of this case it is necessary to discuss only the following one:

"The \$1.00 charge imposed by Ordinance No. 33 upon passengers enplaning upon commercial aircraft at Dress Memorial Airport, not being related to or apportioned according to the use of facilities at Dress Memorial Airport, constitutes an unreasonable burden upon interstate commerce in the United States."

Appellants' argument on appeal is that that conclusion is erroneous and the \$1.00 tax is a valid service tax for the use of facilities provided by appellants at Dress Memorial Airport and thus not an unreasonable burden on interstate commerce.

There is no question that the incidence of the tax imposed by Ordinance No. 33 falls on interstate com-

merce. The tax is on the act of enplanement on one of the appellee airlines and in 1966, 88.4% of the persons departing Dress Memorial Airport upon the appellee airlines enplaned for ultimate destinations beyond the State of Indiana.

The basic principle governing the power of a state to levy a tax affecting interstate commerce is that such a tax "can only be justified as designed to make such commerce bear a fair share of the cost of the local government whose protection it enjoys." *National Bellas Hess, Inc. v. Dept. of Revenue* (1967), 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505; *Freeman v. Hewit* (1946), 329 U.S. 249, 67 S.Ct. 274, 91 L.Ed. 265. The mere fact that the taxing authority denominates a tax as a "use" or "service" does not settle the question, however. The classification used by the taxing authority for the assessment of such fees must embody a uniform, fair, practical standard bearing a reasonable relationship to the use of state facilities. *Northwest Airlines, Inc., v. Joint City-County Airport Bd.* (1970, Mont. S.Ct.), 463 P.2nd 470; *Hendrick v. Maryland* (1915), 235 U.S. 610, 35 S.Ct. 140, 59 L.Ed. 385.

The sole issue then on this appeal is whether the act of enplaning a commercial aircraft is reasonably related to the use of the facilities at Dress Memorial Airport for which the \$1.00 tax is levied.

The facts are undisputed and show the following:

In 1967, there were 146,955 enplaning passengers and 145,142 deplaning passengers on air carrier flights at Dress Memorial Airport. In 1967, there were 14,834 take-offs and landings by commercial air carriers and there were 84,598 take-offs and landings by other civil and military aircraft.

The airport facilities at Dress Memorial Airport include the following facilities and services:

**"(1) Main Terminal Building**

air passenger service counters  
air freight service counters and facilities  
waiting room  
rest rooms  
dining room  
bar  
lunch counter  
newsstand  
barber shop  
display areas  
taxi stands  
car rental counters  
baggage facilities  
telephone booths

**"(2) Other Facilities**

private hangar facilities  
nonscheduled airline hangar facilities, office  
space, and waiting areas  
entrance and exit facilities and sidewalks  
parking lots  
fuel storage areas  
office space  
runways and taxi-ways  
approach lighting system  
instrument lighting system"

By the express terms of the Ordinance the revenue from the tax is for the support of all of these facilities, the relevant part stating:

**"Section 5. All revenue collected from said use and service charges shall be held by the**

Evansville-Vanderburgh Airport Authority District in a separate fund for the purpose of defraying the present and future costs incurred by said Airport Authority in the construction, improvement, equipment, and maintenance of said Airport and its facilities for the continued use and future enjoyment by all users thereof." (Emphasis added.)

However, enplaning commercial air passengers are not the only persons using these facilities. It was stipulated by the parties that the above facilities and services are also used by the following classes of persons who are not subject to the \$1.00 tax imposed by Ordinance No. 38:

- (a) Enplaning commercial passengers who are active members of the armed forces;
- (b) Enplaning commercial passengers stopping over or changing planes at Dress Memorial Airport after arrival by commercial aircraft;
- (c) Deplaning commercial passengers;
- (d) Persons arriving or departing on non-commercial or nonscheduled aircraft;
- (e) Persons sending or receiving air freight shipments;
- (f) Persons meeting or seeing off commercial and non-commercial passengers;
- (g) Persons visiting the airport for the purpose of observing flight operations or for the purpose of using dining, bar, car rental, or other facilities.

These classes of users of airport facilities actually con-

stitute a majority of those persons who use one or more of the airport facilities.

It is obvious that certain enplaning commercial passengers are subject to the tax regardless of the extent to which they use the airport facilities. On the other hand persons who may make very extensive use of the facilities are not subject to the tax unless they actually board one of the appellees' commercial flights. For example, a commercial passenger carrying only a briefcase may be driven to the airport by his wife, immediately buy a ticket and board the airplane. He is subject to the so-called "use" tax. Another person may drive to the airport and park his car at the facility provided, get a haircut, eat dinner, use the washroom, and then get in his own private jet and take off. He does not pay the \$1.00 tax. Also a deplaning commercial passenger, who makes the same minimum use of the facilities as an enplaning commercial passenger, does not have to pay the tax.

The substantially identical issue was recently decided in *Northwest Airlines, Inc., v. Joint City-County Airport Bd.*, *supra*. That case involved a Montana statute which authorized airport boards to impose on each commercial air carrier operating aircraft over 12,500 lbs. a so-called "service" charge of \$1.00 for each originating passenger enplaning upon its aircraft at that airport.

The Montana Supreme Court held that the statute was unconstitutional in several respects including the fact that the tax could not be justified as a use and service fee because its imposition was not reasonably related to actual use of the airport facilities. The court said:

"In holding Chapter 281, and the tax imposed pursuant thereto, to be constitutional, the trial court rested its decision on the single proposition that the tax was user tax on passengers. A basic principle governing the power of the state to levy an exaction on interstate commerce, recently reaffirmed by the Supreme Court in *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753, 756, 87 S.Ct. 1389, 1391, 18 L.Ed.2d 505 (1967), is that 'State taxation falling on interstate commerce \*\*\* can only be justified as designed to make such commerce bear a fair share of the cost of the local government whose protection it enjoys.' It follows from this that fees collected as compensation for the use of state facilities must be levied according to a 'uniform, fair, and practical standard.' *Hendrick v. Maryland*, 235 U.S. 610, 624, 35 S.Ct. 140, 59 L.E. 385 (1915). The formula or classification adopted by the state must bear a reasonable relation to the use of state facilities, *McCarroll v. Dixie Greyhound Lines, Inc.*, 309 U.S. 176, 60 S.Ct. 504, 84 L.Ed. 683 (1940), in order to insure that interstate commerce bear only the burden of fair compensation or intrastate activities incidental to it.

"Measuring against these constitutional standards, Chapter 281 cannot be justified as a use tax. The charge is levied arbitrarily without any reference to actual use of airport facilities by the passenger's use of terminal facilities. The stipulated facts indicate that the majority of users of the airport (arriving passengers, private aviators, visitors, etc.) are exempted from the payment of any charge, yet a substantial number of persons

so exempted make equal or greater use of airport facilities. Similarly, a passenger who has originated his journey elsewhere by commercial air carrier, and who makes a stopover at the Helena airport using airport facilities, is exempt from payment of the fees, while a traveler following an identical route and making no greater use of the facilities must pay if he arrives in Helena by means other than by commercial air carrier." 463 P.2d at 474.

The fact that the Montana tax was in form imposed on the carrier instead of the passengers as in the case at bar, is of no legal significance. *Henderson v. Mayor of New York* (1876), 92 U.S. 259, 23 L.Ed. 543.

It is clear and we so hold that the tax imposed by Ordinance No. 33 is not reasonably related to the use of the facilities which benefit from the tax, and is, therefore, an unreasonable burden on interstate commerce in violation of Art. I, § 8, cl. 3 of the United States Constitution.

Judgment affirmed.

Hunter, C.J., Arterburn, Givan and Jackson, JJ., concur.